

INFRASTRUCTURE DEVELOPMENT AGREEMENT

by and between

NUGGET JOINT VENTURE, L.C.

and

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

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INFRASTRUCTURE DEVELOPMENT AGREEMENT

THIS INFRASTRUCTURE DEVELOPMENT AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2014 ("Effective Date") by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia in its proprietary capacity, and not in its governmental or regulatory capacity ("County"); and **NUGGET JOINT VENTURE, LC**, a Virginia limited liability company ("Nugget").

RECITALS:

- R-1. Consideration for County and Nugget entering into this Agreement is the real estate swap that is further identified in the contemporaneously executed Real Estate Exchange Agreement dated _____ between Nugget and County ("REEA").
- R-2. Pursuant to the REEA, Nugget will be the sole owner, in fee simple absolute, of certain land located in Fairfax County, Virginia, consisting of approximately 9.1157 acres (the "Nugget Property"). The Nugget Property is more particularly shown on **Exhibit A** attached hereto.
- R-3. Pursuant to the REEA, County will be the sole owner, in fee simple absolute, of certain land located in Fairfax County, Virginia, consisting of approximately 5.55966 acres (the "County Property"). The County Property is more particularly shown on **Exhibit A** attached hereto.
- R-4. Phase II of the Dulles Corridor Metrorail Project contemplates that a new metrorail station, to be named the Innovation Center Station (the "Metro Station"), shall be constructed and placed in the median road/airport access highway near the intersection of the Dulles International Airport Access Highway/Dulles Toll Road and Route 28.
- R-5. The Nugget Property and the County Property are subject to those certain Proffers associated with RZ 2009-HM-017 approved by the Fairfax County Board of Supervisors ("Board"), in its governmental capacity, on [_____] (collectively, as amended or clarified, the "Proffers").
- R-6. The Nugget Property and the County Property are subject to that certain Proffer Allocation Agreement allocating responsibilities for certain Proffers.
- R-7. Nugget and County desire to develop their respective Property which will require the construction of the Common Infrastructure.
- R-8. Nugget and County desire to share, in accordance with this Agreement, the cost to construct the Common Infrastructure.

R-9. Nugget and County are entering into this Agreement to evidence their cooperation, rights, obligations, agreements and understandings with respect to the foregoing.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the County and Nugget intending to be legally bound do hereby agree as follows.

1. **Recitals.** The Recitals above are hereby incorporated by reference.
2. **Definitions.** The capitalized terms used in this Agreement shall, unless the context otherwise requires or such capitalized terms are defined elsewhere in this Agreement, have the meanings specified in this Section 2:

Budget. The budget for the Total Cost of the Common Infrastructure in the form attached as **Exhibit C**, as the same may be amended from time to time by written agreement of Nugget and County. It is acknowledged by the parties that the initial budget attached as **Exhibit C** at the time this Agreement is executed is preliminary and subject to change, and each of Nugget and County agrees to work cooperatively and in good faith to develop a mutually acceptable revised Budget. The Budget includes a contingency for Common Infrastructure and a contingency for County directed changes that will be further modified as part of the amendments to the Budget and its final approval as part of the Construction Contract.

Common Infrastructure Approval. All approvals required from the applicable governmental and quasi-governmental authorities that are necessary to develop and construct the Common Infrastructure, all of which approvals shall be obtained in accordance with the terms of this Agreement.

Common Infrastructure. Those certain improvements for the benefit of the County Property and Nugget Property as further described in Section 3 below and shown on **Exhibit M** attached hereto.

Construction Manager. Construction Manager as used throughout this Agreement shall mean ICS-CM LLC. Construction Manager is the entity that will be responsible for the design of the Project, Common Infrastructure Approval and Pre-Construction Soft Costs as identified in Section 4 herein to be reimbursed by County and Nugget pursuant to Section 4.d. If Nugget's final Budget and Construction Schedule are selected in accordance with Section 5(a)(ii) herein, then Construction Manager shall assume, by contract, all rights and obligations of the Constructing Party pursuant to this Agreement. Construction Manager's scope of work for design and, if applicable, construction of the Project as Constructing Party, are identified in the attached **Exhibit O** and throughout this Agreement. Construction Manager shall enter into a Contract with Nugget for performance of all services that are and may be required pursuant to this

Agreement, in a form and format agreed upon by both County and Nugget, and County shall be a direct third party beneficiary of such contract.

Construction Schedule. The schedule for the design and construction of the Common Infrastructure as set forth on **Exhibit D** attached hereto.

County Critical Schedule Milestones. The “County Critical Milestones” identified on the Construction Schedule. The Critical Construction Schedule Milestones may not be adjusted or revised without County approval, which approval shall only be authorized for good cause shown.

DPWES. The Department of Public Works and Environmental Services, Fairfax County.

Effective Date. The date on which this Agreement has been signed by Nugget, County and Construction Manager, as indicated by the acknowledgments included on the applicable signature pages and such date shall be filled in on the first page of this Agreement.

Hard Construction Costs. Any and all costs and expenses (other than Soft Costs) incurred in connection with the construction, installation and completion of the Common Infrastructure.

Mortgagee. An institutional lender which may be one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds or business trusts, including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing entities; provided, that each of the above entities, or any combination of such entities, shall qualify as a Mortgagee if (a) each such entity shall be subject to the jurisdiction of the courts of the Commonwealth of Virginia (either state or federal) in any actions relating the project, and (b) each such entity, or combination of such entities, shall have individual or combined assets, as the case may be, of not less than Two Billion Dollars (\$2,000,000,000).

Person. Any natural person, limited liability company, general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative or association.

Pre-Construction Soft Costs. Soft Costs incurred for the design of the Common Infrastructure, securing the Common Infrastructure Approval, and developing the Final Approved Budget which are capped in the amount set forth in **Exhibit C**.

Project. Project shall mean all work required to obtain the Common Infrastructure Approval and construct the Common Infrastructure.

Project Claims. Project Claims shall mean claims by third parties (excluding claims by the Construction Manager) for delays to the Project or claims related to the design and construction of the Project.

Property. The County Property, together with the Nugget Property, shall be referred to as, collectively, the “Property.”

Soft Costs. Any and all costs and expenses (other than Hard Costs) incurred in connection with the Common Infrastructure, including, without limitation, planning and engineering fees, surveying fees, subdivision costs, legal fees for Construction Contract, deeds of dedication, subdivisions, easements and vacations and other development documents for the Common Infrastructure, permit fees, municipality bonding fees and related bond release costs, performance bond fees, inspection fees, construction manager fees, project personnel (compensation and benefits proportionately charged [e.g., salaries, fringe benefits and expenses of the Development Manager and Assistant Development Manager]), review fees, approval and filing fees, consulting fees and other miscellaneous fees paid to third parties.

Substantial Completion and Substantially Complete. The date when the Road Improvements (hereinafter defined) are complete such that their use has commenced or are sufficiently complete such that their intended use may be commenced.

Total Cost. Costs and expenses with respect to the Common Infrastructure, and shall consist of Hard Construction Costs (as set forth on **Exhibit C**), Soft Costs (as set forth on **Exhibit C**), Project Management Fee (as set forth on **Exhibit C**), Construction Contingencies (as set forth on **Exhibit C**) and Right of Way Acquisition Allowance (as set forth on **Exhibit C**).

REA. That certain Reciprocal Easement Agreement dated the _____, 2014 by and between County and Nugget.

3. Common Infrastructure. The Road Improvements, Intersection Improvements, Traffic Signal Improvements, Bicycle Lanes, the Stormwater Improvements and the County Garage Site, as defined below, which are collectively referred to herein as the “Common Infrastructure”.

- a. Road Improvements. The Constructing Party (as hereinafter defined) shall construct the following road improvements as described below and reflected in the CDP/FDP and on the Phasing Sheet (collectively, the “Road Improvements”).

- i. *Sunrise Valley Drive Frontage Improvements.* Sunrise Valley Drive shall be improved to provide for two (2) through lanes in each direction (eastbound and westbound), a raised concrete median, a four-foot wide on-road bike lane both eastbound and westbound (exclusive of the adjacent two foot (2') gutter pans) and a single exclusive westbound left-turn lane at the North-South Road ("SVD Left Turn Bay") as generally reflected in the CDP/FDP (as defined in the Proffers) consistent with the Phasing Plan (as defined in the Proffers) and based on a 40 mile per hour (mph) design speed. These roadway improvements to Sunrise Valley Drive shall be provided prior to issuance of the first Non-RUP for the Metro Station Facilities (as defined in the Proffers), as generally shown on the CDP/FDP. Those streetscape improvements along Sunrise Valley Drive associated with Land Bays A and B shall be constructed commensurate with Buildings A1, A2 and B1, as further qualified by Proffer 21 of the Proffers.
- ii. *Carta Way Improvements.* Carta Way will be constructed from its current terminus north to intersect Sunrise Valley Drive as a four-lane, undivided roadway with sidewalks along both the east and west sides of Carta Way as generally depicted on the Phasing Plan of the CDP/FDP and based on a design speed of 30 mph. The right-of-way area for Carta Way, as shown on the CDP/FDP, shall be reserved for future dedication for public street purposes consistent with Proffer 16 of the Proffers. The final design and extent of these ultimate improvements to Carta Way as generally described and referenced below shall be determined prior to the submission of the site plan for the Metro Station Facilities. Streetscape improvements shall be constructed on the east side of proposed Carta Way within the existing right-of-way which shall include a four (4) foot buffer strip and a five (5) foot wide sidewalk.

(1) [In conjunction with the Carta Way improvements, a total of four (4) sawtooth Bus Bays with shelters along the west side of Carta Way between the entrance to the planned Kiss and Ride Facilities and Sunrise Valley Drive shall be designed and constructed. The Bus Bay area shall be distinguished from the adjacent travel lanes associated with Carta Way through the use of concrete or other such differing materials. Prior to the submission of the first site plan for the Metro

Station Facilities, the final design of these bays and shelters shall be coordinated with FCDOT.]

- iii. *North-South Road.* A new North-South Road shall be constructed, extending south from Sunrise Valley Drive to the new East-West Road. This new local road shall consist at a minimum of two (2) northbound lanes and two (2) southbound lanes, as well as construction of the streetscape along the Land Bay C frontage. The streetscape along the frontages of Land Bays A, B and D shall be constructed as reflected on the Phasing Plan of the CDP/FDP and as described below. The streetscape associated with each of Buildings A2, A3, B1, B2 or D1 building frontage will be constructed in conjunction with the individual building.
- iv. *East-West Road - Carta Way to North-South Road.* If not previously constructed by others, then prior to the issuance of a Non-RUP for the Metro Station Facilities, the Constructing Party shall construct or finish the construction of a new local street referred to as the East-West Road, as generally reflected in the CDP/FDP and specifically reflected on the Phasing Plan, extending west from existing Carta Way to the North-South Road. Notwithstanding what is shown on the CDP/FDP, the area of right-of-way dedication along the Land Bay C frontage may be shifted to 18 inches behind the back of curb if needed to meet the tree canopy requirements. In such event, Nugget shall provide a public access and maintenance easement, in a form acceptable to the County Attorney, over the streetscape (including the landscape amenity panel and sidewalk).
- v. *East-West Road - North-South Road to Private Drive.* If not previously constructed by others, then prior to the issuance of the first Non-RUP for Building D1, the Constructing Party shall construct or finish the construction of another portion of a new local street known as the East-West Road from the North-South Road west to the Private Drive and then south to Sayward Boulevard as generally reflected in the CDP/FDP, and specifically in the Phasing Plan. Notwithstanding what is shown on the CDP/FDP, the area of right-of-way dedication along the Land Bay D frontage may be shifted to 18 inches behind the back of curb if needed to meet the tree canopy requirements. In such event, a public access and maintenance easement, in a form acceptable to

the County Attorney, over the streetscape (including the landscape amenity panel and sidewalk) shall be provided by Nugget.

- vi. *Construction of East-West Road by Others.* In the event the East-West Road has been completely constructed by others prior to the submission of a site plan for the Metro Station Facilities, then Nugget and County shall contribute to the County (in its governmental capacity) one-half of the hard and soft costs associated with the design and construction of said road as evidenced by invoices. Nugget's and County's intent for such contribution is that the monies shall be released by the County (in its governmental capacity) to the party responsible for the road's design and construction.
- b. Intersection Improvements. The Constructing Party shall construct the following intersection improvements as described below and reflected in the CDP/FDP and on the Phasing Plan (collectively, the "Intersection Improvements").
 - i. *Carta Way/East-West Road.* Remove all or a portion of the raised median on Carta Way as approved by VDOT in order to facilitate the connection of the new East-West Road.
- c. Traffic Signals. The Constructing Party shall cause to be performed the following studies and construct, as applicable, five (5) new traffic signals in the area surrounding and/or proximate to the Property as described below and reflected in the CDP/FDP and on the Phasing Plan (collectively, the "Traffic Signals Improvements").
 - i. Construction Party or Nugget, as applicable, shall complete and submit to VDOT and FCDOT warrant studies for the installation of Traffic Signals Improvements at the following locations:
 - (1) Sunrise Valley Drive/North South Road
 - (2) Sunrise Valley Drive/Carta Way
 - (3) Sunrise Valley Drive/Sayward Boulevard
 - (4) Carta Way/East-West Road
 - (5) Carta Way/Sayward Boulevard
 - ii. Warrant studies shall be completed and submitted in accordance with the submission of site plans as follows:

- (1) With the submission of the first site plan for the Metro Garage by the Constructing Party.
 - (2) With the submission of the site plan for the 2nd new building on the Property by Nugget.
 - (3) With the submission of the site plan for the 4th new building on the Property by Nugget.
 - (4) No earlier than six (6) months after the issuance of the first RUP or Non-RUP for the last new building on the Property but in any event no later than bond release for the last new building by Nugget.
 - (5) The warrant studies shall include an assessment of then-existing traffic conditions associated with the completion of the building trigger (i.e., 2nd, 4th and last new building).
- iii. If any signal location identified in Subparagraph 3.c.i. is deemed warranted by VDOT after having reviewed any warrant study completed in accordance with the timelines established in Subparagraph 3.c.ii. and approved it for installation, then such traffic signal, including pedestrian enhancements and uninterrupted power supply systems (“UPS”) (as may be required by VDOT,) shall be designed, equipped and installed by Nugget.¹ In such event, no further warrants shall be required for that individual location and this proffer is of no further force or effect.
 - iv. If a signal is deemed not warranted by VDOT at any of the locations identified in Subparagraph 3.c.(i) after having reviewed the triggered warrant study, then such location shall be reviewed again in accordance with the schedule set forth at Subparagraph 3.c.ii.(1).
 - v. If a signal is deemed not warranted by VDOT at any of the locations identified in Subparagraph 3.c.i. at the time set forth at Subparagraph 3.c.ii.(4), then Nugget² shall contribute to the County (in its governmental capacity), its PM peak hour pro-rata

¹County and Nugget share cost of signal construction for three (3) of the five (5) signals. Sunrise Valley Drive/Sayward Boulevard and Carta Way/Sayward Boulevard signals are solely Nugget costs.

²See Footnote 1

share (as identified below) of the costs associated with the future installation of a signal at this location by others:

- (1) Sunrise Valley Drive/North-South Road (33%);
- (2) Sunrise Valley Drive/Carta Way (25%);
- (3) Sunrise Valley Drive/Sayward Boulevard (20%);
- (4) Carta Way/East-West Road (18%); and
- (5) Carta Way/Sayward Boulevard (21%).

- d. Bicycle Lanes. Subject to the VDOT approval and in combination with the street and streetscape improvements identified in the Proffers, pavement and striping for an on-street bicycle lane along the Sunrise Valley Drive frontage of Land Bays A and B shall be provided as depicted on the CDP/FDP with the final dimension determined in consultation with the FCDOT Bicycle Coordinator (“Bicycle Lanes”). In addition, the outside lane along northbound and southbound Carta Way shall be designated with a sharrow (shared-lane marking) if requested by FCDOT and subject to VDOT approval.
- e. Stormwater Improvements. Stormwater management facilities shall be designed in accordance with the CDP/FDP and Proffers for the Property and with local and state laws, shall seek to minimize the effect of the proposed impervious cover, including application of stormwater reuse, retention, detention, extended filtration and, where soils and infrastructure allow, infiltration to improve downstream waters. The stormwater management measures may be phased with development (“Stormwater Improvements”).
- f. County’s Garage Site. A portion of the Property in the location shown on Exhibit N attached hereto will be rough graded in accordance with the approved grading plan within range of +/- six inches of finished rough grade (“County Garage Site”). The grading plan shall specify any fill areas within five feet (5’) of the building envelope, or such greater distance as is required by an engineer or governmental authority, for construction of improvements as shown on the grading plan. Any fill areas within the building pad affecting construction of the improvements to be constructed will have been filled in a professional manner, organic materials removed, fill placed and compacted to meet all local and federal requirements, and placed in a manner to support proposed product at the proposed foundation

elevation. A registered engineer who is licensed and insured in the Commonwealth of Virginia, and reasonably acceptable to both parties, will certify replacement soils and shall provide soil engineer's certifications on the building pads impacted by such soils.

4. Design of the Common Infrastructure and Obtaining the Common Infrastructure Approval.

- a. Construction Manager, pursuant to its contract with Nugget, will contract for the design of the Common Infrastructure. County and Nugget shall be a named third party beneficiary of any contract entered into by the Construction Manager with full right of assignment of such contract(s) to the County if this Agreement is terminated and such contract(s) are to be assigned to the County in accordance with this Agreement. Construction Manager shall obtain the approval of the County and Nugget with respect to the design of the Common Infrastructure including any contract(s) with third parties for the design, which approvals shall not be unreasonably withheld, conditioned or delayed. The costs of design (including the amounts due under the contract(s)) shall be part of the Budget and paid by Nugget and County in accordance with this Agreement.
- b. Construction Manager, pursuant to its contract with Nugget, will contract for the pursuit and obtaining the Common Infrastructure Approval. The scope of work for the Construction Manager is set forth on **Exhibit O** attached hereto. Construction Manager shall manage obtaining the approval of the County and Nugget with respect to the Common Infrastructure Approval and the contract(s) with third parties for the Common Infrastructure Approval in excess of \$50,000, which approvals shall not be unreasonably withheld, conditioned or delayed. The costs of pursuing and obtaining the Common Infrastructure Approval (including the amounts due under the contract(s)) shall be part of the Final Approved Budget and paid by Nugget and County in accordance with this Agreement.
- c. The County and Nugget shall reasonably cooperate with and assist the Construction Manager and provide all reasonable consents and/or owner authorizations as may be required for design of the Common Infrastructure and the pursuit and approval of the Common Infrastructure Approval. With respect to the Common

Infrastructure Approval, the Construction Manager shall provide to County and Nugget copies of the first submission site plans, first submission review comments, second submission site plans and subsequent site plan submissions for any of the Common Infrastructure that are submitted to or received from, as applicable, DPWES after the Effective Date of this Agreement.

- d. Reimbursement of Pre-Construction Soft Costs incurred by the Construction Manager shall be capped at the amount established in **Exhibit C**, unless modifications to the cap are approved in writing by Nugget and County, which approvals shall not be unreasonably withheld. No modifications to the cap will be authorized unless good cause is shown and only if the additional expenditure was approved by County and Nugget prior to the incurring of such costs.
- e. Nugget and County agree that their representatives will conference with Construction Manager on a bi-weekly basis, or at such other interval as circumstances may reasonably warrant, to review the status of design of the Common Infrastructure and the pursuit and approval of the Common Infrastructure Approval.
- f. Prior to or contemporaneously with execution of this Agreement, Nugget shall assign any design professional contract(s) it has entered into with respect to the Project to the Construction Manager. As part of any such assignment, Nugget shall require that the Construction Manager assume, without reservation, all such contracts. County and Nugget shall retain all rights in the design professional agreements that exist by virtue of this Agreement after the assignment to Construction Manager.
- g. Subject to the limitations of liability and guaranty stated in Section 20, County and Nugget shall look to the Construction Manager for any and all additional costs and delays to the Project arising out of or related to design errors and/or omissions but only to the extent caused by the negligence of Construction Manager.
- h. All design professionals that perform work for the Construction Manager and/or the Project shall be required to carry the insurances required by **Exhibit J**. County, Nugget and Construction Manager shall be named an additional insured on all such policies.

- i. County shall be entitled to rely upon the accuracy and completeness of the plans and engineering prepared for the Common Infrastructure to construct other improvements (e.g., the County parking garage). In the event County uses any of the Common Infrastructure plans or engineering for incorporation of the designed work into any County project (including the parking garage), the Construction Manager (and Nugget) shall have no liability or responsibility with respect to the design of such other improvements and the County shall independently verify the accuracy and completeness of any such plans, engineering or other materials.
- j. The Construction Schedule will contain time periods during the design of the Project in order to obtain approvals for various matters from the County as provided in this Agreement. If the County exceeds any time periods set forth in the Construction Schedule then Nugget or Construction Manager shall notify the County in writing of the failure to act (“Initial Request”). If the County does not approve or provide detailed reasons for its non-approval of any request under this Agreement within 15 days of receipt of the Initial Request, Nugget or the Construction Manager may then send a final written request (“Final Request”) stating that if the County does not respond within two (2) business days the requested matter will be deemed approved. If the County has still not responded within such two (2) business days, then the County shall be deemed to have given the matter its approval. During the pendency of the Initial Request, the County may request up to an additional 15 days, for a maximum of 30 days, within which to respond to the Initial Request. Nugget and Construction Manager shall be entitled to an extension of time for completion of the design portion of the Construction Schedule if it is demonstrated that any of the additional days requested by County caused or will cause delay to the critical path of the design portion of the Construction Schedule.
- k. Payment. Prior to establishment of the Final Approved Budget (as defined herein), Nugget and the County shall each be responsible to the Construction Manager for its percentage allocation of the Pre-Construction Soft Costs, which shall be calculated according to percentage of completion of the Common Infrastructure relating to the Soft Costs as set forth in the Final Approved Budget. There

shall be no retainage in the Final Approved Budget for Pre-Construction Soft Costs. The County shall pay or reimburse Construction Manager its percentage allocation of the Pre-Construction Soft Costs no later than fifteen (15) days after County has received the request of payment of such Pre-Construction Soft Costs. Nugget shall pay or reimburse Construction Manager its percentage allocation of the Pre-Construction Soft Costs no later than fifteen (15) days after Nugget has received the request of payment of such Pre-Construction Soft Costs. If County or Nugget has not made the required payments or reimbursement within ten (10) days after receipt of the request, interest on the payment or reimbursement amount shall accrue at the then current rate of interest of eight percent (8%) per annum payable to Construction Manager calculated from the date the payment or reimbursement was due until the actual date on such payment or reimbursement is made by the County or Nugget, as applicable.

5. Common Infrastructure: Budget and Construction Schedule.

- a. Nugget and County have approved the initial Budget and the initial Construction Schedule attached to this Agreement.
 - i. Nugget and County shall each independently update the Budget and Construction Schedule at the following stages: (1) Design Development Drawings; (2) Permit Drawings; and (3) Final Construction Drawings and present the updated Budget and updated Construction Schedule each time to the other Party. In updating the Budget and Construction Schedule, Nugget and County shall work on an “open book” basis with one another and shall work together in formulating each of the Party’s updated Budget and updated Construction Schedule.
 - ii. At the Final Construction Drawings, the County shall select the final Budget (“Final Approved Budget”) and associated Construction Schedule that represents, in the County’s sole discretion, the best value for the Project, both of which shall be attached to and made part of the Construction Contract (hereinafter defined). Nugget and County, as part of each of their budget submissions, shall include appropriate contingencies in the Final Approved Budget. The Party whose Final Approved Budget and associated

Construction Schedule is selected is called the “Constructing Party”. The Party whose updated Budget and associated Construction Schedule is not selected as the Final Approved Budget is called the “Non-Constructing Party”. For purposes of this Agreement, if the Final Approved Budget and associated Construction Schedule of Nugget is selected, then the Construction Manager, pursuant to its contract with Nugget, shall be the Constructing Party and the County and Nugget shall be the Non-Constructing Party; and if the Final Approved Budget and associated Construction Schedule of County is selected, then there will be no Construction Manager (and the Construction Manager is released from any construction obligations under this Agreement other than any obligations to assign contract(s) to the County), the County shall be the Constructing Party and Nugget shall be the Non-Constructing Party.

- iii. Nugget and County have agreed upon percentage allocations of the Total Cost of the Common Infrastructure as set forth by line-item on **Exhibit C**, attached hereto; provided, however, the final Total Cost of the Common Infrastructure together with the parties’ agreed upon percentage allocations of the Total Cost of the Common Infrastructure will be set forth in the Final Approved Budget.
- b. After obtaining the Common Infrastructure Approval and approval of the Construction Contract, the Constructing Party shall use commercially reasonable efforts to cause the Development Contractor (defined herein) to complete the Common Infrastructure in accordance with the Construction Contract including the Construction Schedule.
- c. If Nugget’s final Budget and associated Construction Schedule is selected by the County, and if the Construction Manager fails (as determined by County in its reasonable discretion) to: (1) use due diligence and commercially reasonable efforts to manage the Construction Contract in the pursuit of completion of the Common Infrastructure in accordance with the Construction Schedule; or (2) manage the Construction Contract including the Construction Schedule in a manner consistent with the standard of care of a

construction manager; then County, after ten (10) days written notice to Nugget and Construction Manager, may assume the management of the Construction Contract (and the Construction Schedule) if the Construction Manager has not, in County's reasonable discretion, remedied such failures within the 10 day notice period; provided, however, that if the County does assume such management then: (i) the County shall work diligently to arrange for release of the Municipal Improvement Bonds provided by the Construction Manager and replace them with adequate security with the County in its governmental capacity as soon as reasonably practical after the County assumes such management of the Construction Contract, but no later than 180 days thereafter; (ii) any Major Decision or approval set forth in the Agreement that required the Construction Manager or Nugget to obtain consent or approval from County will become the obligation of County to obtain such consent and approval from Nugget; (iii) all obligations and/ or responsibilities of the Construction Manager and Nugget with respect to the Construction Contract will be assumed by County; and (iv) Nugget shall have all of the rights of County with respect to such obligations and/or responsibilities that County otherwise would have if the Construction Contract had not been assumed by County.

- d. With respect to the actual physical work of constructing the Common Infrastructure in accordance with the Common Infrastructure Approval, the Constructing Party shall obtain bids from at least three (3) reputable general or site contractors from a list of contractors pre-approved by the Non-Constructing Party to perform the work with a guaranteed price and completion date and with delay damages payable on a per diem basis if the work is not Substantially Completed by the guaranteed completion date (which may include Excusable Delays). The bid package for the contractors shall include the County's General Conditions in a form reasonably approved by the County and Nugget. After the bids have been obtained, the Constructing Party shall review such bids with Non-Constructing Party and then, if the other material terms are substantially the same, non-Constructing Party shall select the lowest qualified bid; provided, however, with the approval of the Non-Constructing Party, which approval shall not be unreasonably withheld, conditioned or delayed, the Constructing Party may select a qualified bid other than the lowest

qualified bid if Constructing Party determines that such other qualified bid is in the better interests for completing the Common Infrastructure in accordance with the Construction Schedule and the Final Approved Budget (such selected general contractor shall be referred to herein as the “Development Contractor”). In connection therewith, Constructing Party and the Development Contractor shall enter into a construction contract in a form reasonably acceptable to Constructing Party and the Development Contractor (the “Construction Contract”), and reasonably approved by Non-Constructing Party. Constructing Party and Non-Constructing Party shall mutually agree upon all terms of the Construction Contract, including, but not limited to, schedule, price, liquidated damage amounts, bonding or financial guarantees, etc. Upon request of Constructing Party, the Non-Constructing Party may, but is not obligated to, approve an amendment to this process so that Constructing Party can work with and select one contractor without such bidding process if Constructing Party reasonably demonstrates to the Non-Constructing Party that this is in the best interests of completing the Common Infrastructure in accordance with the Construction Schedule and the Final Approved Budget. Non-Constructing Party and Constructing Party agree to cooperate with each other to obtain and review the necessary bids and for Constructing Party to enter into the Construction Contract in a timely manner so as to avoid any delay in constructing the Common Infrastructure.

- e. With respect to the actual physical work of constructing the Common Infrastructure in accordance with the Common Infrastructure Approval, if the Constructing Party is the County, then the Construction Contract shall be competitively bid in accordance with the Virginia Public Procurement Act as amended by the Fairfax County Purchasing Resolution. The final form of Construction Contract will be between the County and the Development Contractor and the terms and conditions shall be the County’s then current standard construction contract and general conditions. County will modify the Construction Contract consistent with the terms of this Agreement.
- f. Constructing Party may contract with other contractors or consultants in addition to the Construction Contract as necessary for the completion of the Common Infrastructure. Constructing

Party shall obtain the approval of the Non-Constructing Party with respect to the contract(s) with such other contractors or consultants, which approval shall not be unreasonably withheld, conditioned or delayed. The costs of the other contractors or consultants shall be part of the Budget and paid by County and Nugget in accordance with this Agreement.

- g. The parties agree that their representatives will conference on a bi-weekly basis along with the Construction Manager (if applicable), or at such other interval as circumstances may reasonably warrant, to review the status of construction progress of the Common Infrastructure. Non-Constructing Party shall have the right to inspect the progress of construction, to review any site plans, approvals or other documents with respect to the Common Infrastructure and any other matters with respect to the construction of the Common Infrastructure.
- h. Constructing Party shall obtain the Non-Constructing Party's approval for Major Decisions, which approval shall not be unreasonably withheld, conditioned or delayed. Major Decisions shall mean those decisions set forth on **Exhibit E**. Except as otherwise provided in this Agreement, the Constructing Party may take those actions that are not Major Decisions in obtaining the Common Infrastructure Approval and the prosecution to completion of the Common Infrastructure.
- i. Constructing Party agrees to copy the Non-Constructing Party, or send a copy to the Non-Constructing Party, on correspondence to or from the Development Contractor or, if applicable, the Construction Manager. Constructing Party shall use good faith efforts to seek and obtain input from the Non-Constructing Party in the management of the Development Contractor and any Construction Manager.
- j. Constructing Party shall obtain the Non-Constructing Party's approval of the bonding company with respect to the Municipality Improvement Bonds for the Common Infrastructure, which approval shall not be unreasonably withheld, conditioned or delayed, and to the extent permissible by the bonding company the Non-Constructing Party will be made a third party beneficiary thereto.

- k. The Construction Schedule will contain time periods in order to obtain approvals for various matters from the Non-Constructing Party as provided in this Agreement. If the Non-Constructing Party exceeds the time periods for approval as set forth in the Construction Schedule then the Constructing Party shall notify the Non-Constructing Party in writing of the failure to act (“Initial Request”). If the Non-Constructing Party does not approve or provide detailed reasons for its non-approval of any request under this Agreement within 15 days of receipt of the Initial Request, the Constructing Party may then send a final written request (“Final Request”) stating that if the Non-Constructing Party does not respond within two (2) business days the requested matter will be deemed approved. If the Non-Constructing Party has still not responded within such two (2) business days, then the Non-Constructing Party shall be deemed to have given the matter its approval. During the pendency of the Initial Request, and if County is the Non-Constructing Party, then County may request up to an additional 15 days, for a maximum of 30 days, within which to respond to the Initial Request. The Constructing Party shall be entitled to an extension time for completion of the Project if it is demonstrated that any of the additional days requested by County caused or will cause delay to the critical path of the Construction Schedule.
- l. If the Non-Constructing Party fails to make timely payments of undisputed sums, or sums due as directed by the Project Arbitrator, as and when due under this Agreement, beyond any notice and cure period, the Constructing Party will receive an extension of the Construction Schedule for critical path matters that have been impacted by such failure to make timely payment.
- m. Nugget and County agree that certain work associated with the Common Infrastructure identified at Section 3(f) herein may need to be constructed prior to identification of the Constructing Party. In the event such work becomes necessary, Nugget and County agree that they will execute a mutually acceptable Amendment to this Agreement to authorize the Construction Manager to perform this work prior to selection of a Constructing Party including responsibility for and timing of the payment of costs for such work.

6. Cost Sharing.

- a. The Total Cost of the Common Infrastructure shall be allocated in accordance with **Exhibit C** attached hereto (such percentages on **Exhibit C**, with respect to each of Nugget and County, its “Infrastructure Percentage”). The Budget shall not be modified without the prior written approval of Constructing Party and Non-Constructing Party, which approvals will not be unreasonably withheld, conditioned or delayed.
- b. If the Final Approved Budget and associated Construction Schedule of Nugget is selected pursuant to Section 5(a)(ii) then, a project management fee of four percent (4%)(“**Project Management Fee**”) of both the Hard Construction Costs and the Soft Costs shall be paid to Construction Manager as the fee for Construction Manager’s services pursuant to this Agreement. If County is the Constructing Party, Nugget shall make payment to the County of fifty percent (50%) of the Project Management Fee and County will assume all construction management responsibilities. The Project Management Fee shall be paid in accordance with **Exhibit F** attached hereto. In addition, the Construction Manager, or County if it is the Constructing Party, shall also be reimbursed on monthly basis for the costs (i.e., salary, benefits and other compensation) for one on-site senior and one on-site junior land development person, which will also be set forth in the Final Approved Budget and be part of Soft Costs. The Project Management Fee and monthly reimbursement will be treated as Soft Costs and allocated amongst the parties in accordance with the Infrastructure Percentage.
- c. Constructing Party will post, or provide adequate security for, all of the Municipal Improvement Bonds required with respect to the Common Infrastructure. Without limiting the foregoing, it is agreed that each of Nugget and County shall pay its pro-rata share of the fees required for issuance of construction and completion bonds and/or letters of credit required by governmental bodies with respect to the Common Infrastructure or pursuant to the Construction Contract (“Municipal Improvement Bonds”), with such costs being part of the Soft Costs for the Common Infrastructure.
- d. Once construction of the Common Infrastructure commences, Constructing Party shall provide the Non-Constructing Party

accounting of the actual Total Cost of the Common Infrastructure as part of each Draw Request.

- e. Reserved.
- f. Within ninety (90) days following Substantial Completion for the Common Infrastructure, Constructing Party shall provide the Non-Constructing Party an accounting of the actual Total Cost of the Common Infrastructure. Such accounting shall also set forth the actual escalation in construction costs, from the Effective Date of this Agreement until the date upon which contracts for the Common Infrastructure have been executed, with the calculation of such escalation to be determined by mutual agreement of the parties based on the Engineering News Record (ENR) indexes for materials and construction as adjusted by the City Multiplier for the Washington D.C. area (the “Construction Escalation”). The County Pro Rata Share and Nugget Pro Rata Share shall be adjusted to reflect the Construction Escalation (the “Escalation Adjusted Pro Rata Infrastructure Share”).
- g. Constructing Party shall keep, or cause to be kept, accurate, full and complete books of account pertaining to the Total Costs for the Common Infrastructure. The Non-Constructing Party shall have the right at its option and at its own expense, to conduct audits of the books, records and accounts of Constructing Party related to such work until six (6) months after the final completion of the Common Infrastructure.
- h. Constructing Party shall submit draws for the payment by the County and Nugget of their respective share of the Total Cost of the Common Infrastructure in accordance with the requirements of **Exhibit G** attached hereto (“Draw Request”). Within three (3) business days of receipt of such Draw Request, the Non-Constructing Party and Constructing Party shall meet to review the Draw Request and the Non-Constructing Party shall approve the Draw Request or provide detailed reasons for denial of approval of any part of the Draw Request. Within five (5) days of receipt of such Draw Request, the Non-Constructing Party shall approve their respective share of the Draw Request in full or in part and if approved in part the Non-Constructing Party shall provide detailed reasons for denial of approval of any part of the Draw Request. The County shall pay or reimburse County’s applicable

Infrastructure Percentage of such Total Costs no later than fifteen (15) days after County has received the Draw Request. Nugget shall pay or reimburse Nugget's applicable Infrastructure Percentage of such Total Costs no later than fifteen (15) days after Nugget has received the Draw Request. If County or Nugget has not made the required payments or reimbursement within fifteen (15) days after receipt of the Draw Request (except for the denial of any such part of the Draw Request), interest on the payment or reimbursement amount shall accrue at the then current rate of interest of eight percent (8%) per annum payable to Constructing Party calculated from the date the payment or reimbursement was due until the actual date on such payment or reimbursement is made by the County or Nugget, as applicable.

- i. Subject to the limitations of liability and guaranty stated in Section 20, and if Nugget's final Budget and Construction Schedule are selected in accordance with Section 5(a)(ii) herein, Construction Manager shall be liable for any and all additional cost overruns (including Common Infrastructure contingency overruns), defective work and delays to the Project, but only to the extent caused by the negligence of the Construction Manager in performing its duties during the construction phase of the Project.
- j. Nugget and County shall share and be responsible for, in proportion to the Infrastructure Percentage, the costs related to cost overruns, delays claims from the Development Contractor or claims from third parties due to differing site conditions or other conditions beyond the reasonable control of Nugget or County, for which responsibility is not otherwise ascribed to the Construction Manager, Development Contractor, or any other contractor or design professional performing work at the project, pursuant to their respective agreements.
- k. The costs of repairing damage to the Common Infrastructure as a condition to release of any Municipal Improvement Bond shall be considered one of the Total Costs applicable to the Common Infrastructure except that County and Nugget shall each be solely responsible to promptly repair (subject, however, to Excusable Delay) any damage caused by it or its agents, employees or subcontractors. Nugget and County agree to cooperate with each other to coordinate inspections of the Common Infrastructure for the purpose of determining which of them has caused any such

damage and is therefore responsible for the repair costs. The Non-Constructing Party agrees to cooperate and assist Constructing Party with respect to obtaining release of the Municipal Improvement Bonds for the Common Infrastructure including immediately repairing any damages done to the improvements covered by such bonds. Construction Manager, County and Nugget shall assist and cooperate with one another in order to obtain the release of the Municipal Improvement Bonds as soon as possible. Nugget and County agree that formal terms related to payment for work performed on the Common Infrastructure after Project completion, but before release of the Municipal Improvement Bonds and incorporation of the road improvements of the Common Infrastructure into the Virginia Department of Transportation road network, will be the subject of a Reciprocal Easement Agreement (“REA”) to be negotiated and finalized at a later date consistent with the terms of the REEA and this Agreement. Notwithstanding, the parties agree the REA will address the following non-exhaustive list of items:

- i. Nugget will cooperate with the County to locate a temporary staging area for the construction of the County Garage on the Nugget Property or on the areas of the Common Infrastructure. Notwithstanding the above, no staging area so provided will interfere with the development of the Nugget Property or the Common Infrastructure. Finally, Nugget will give County at least 6 months’ notice if the County staging area must be moved to another area of the Common Infrastructure, in which event County will relocate the staging area as soon as possible but no later than within such 6 months. The use of the staging area by the County will terminate when the County obtains non-RUP for the County Garage.
- ii. Nugget and County will provide reasonable access to each other’s property during construction which does not interfere with the development/construction activities on that property. In addition, when the County obtains the non-RUP for the County Garage, and operations for Metrorail commence at the Innovation Center Station, Nugget will provide continuing access of the public to the County Garage. County and Nugget will cooperate and coordinate such access so that neither unreasonably interferes with the progress of work on their respective Property. Such access

includes deliveries of materials and access of construction equipment. In addition, Nugget and County agree to allow booms on cranes carrying loads to be able to swing over other each other's Property and/or the Common Infrastructure during construction, subject to reasonable restrictions.

iii. Nugget and County shall coordinate and allow access for construction operations associated with any underpinning of buildings and similar work that may be required for building on either Property.

iv. The County will have the right to have non-exclusive public garage signage at the four perimeter roads bounding the County Garage, including pylons and directional signage, indicating that the station name is "Innovation Center Station." Nugget will also have the right to have non-exclusive signage for all development on the Nugget Property at the four perimeter roads bounding the County Garage, including pylons and directional signage. The MWAA and/or Metro "M" logo or name will not be used on any parking garage other than the County Garage. County and Nugget will coordinate with one another and cooperate on a comprehensive signage plan. The placement of signs will be subject to approval of regulatory agencies and the parties will agree upon a reasonable apportionment of the quantity of approved signs and the expense thereof and for the quality of signage consistent with all applicable design guidelines for this transit orientated project.

v. The County shall be responsible for 100% of the maintenance and repair of the County's Pocket Park (as defined in the Proffers and generally as shown on the CDP/FDP). In addition the County will pay its pro rata share, based on contributory drainage, of the costs incurred for best management practices ("BMP") and stormwater detention for the stormwater system associated with the entire Property. The County will not be responsible for any part of the maintenance costs for other parks that are not on the County Property.

vi. Each party will pay its proportionate share of costs associated with BMP and detention from areas based on contributory drainage. Each party will maintain sand filters, bio-filters and stormwater infrastructure on their respective property.

vii. For any of the four perimeter public roads surrounding the County Garage that have not yet been accepted into the VDOT system for maintenance and the County has obtained the non-RUP for the County Garage and operations for Metrorail open to the public have commenced at the Innovation Center Station, then if Nugget desires to close any lanes, or re-route traffic for any of the four perimeter public roads, it will be required to provide a plan for the maintenance of traffic (MOT) to the Fairfax County Department of Transportation who will have the right to approve, disapprove or require modifications to the plan.

viii. As it relates to maintenance and repair of the Common Infrastructure between Final Completion and release of the Municipal Improvement Bonds, the parties agree the REA will provide for the following:

(1). For repair of damages to the Common Infrastructure that are not established as being caused by either party's agents, employees or subcontractors, and for routine maintenance for all elements of the Common Infrastructure that service both the Nugget Property and the County Property, the Constructing Party shall perform such repairs and maintenance, and shall be reimbursed by Non-Constructing Party, in accordance with the Infrastructure Percentage, until release of the Municipal Improvements Bonds, or the expiration of forty-two (42) months, whichever first occurs.

(2). For those elements of the Common Infrastructure that have not had Municipal Improvement Bonds released after the expiration of 42 months from Final Completion, Constructing Party shall continue to perform such repairs and maintenance, but shall be reimbursed only under the following circumstances:

(A) If the damage was caused by the Non-Constructing Party, then those costs shall be reimbursed completely.

(B) If the inability to release the Municipal Improvement Bonds is due to solely to any ongoing construction or development operations of Nugget,

or any affiliated entity, then Nugget shall be fully responsible to the Constructing Party for the costs to repair damages to Common Infrastructure that is not established as being caused by either party's agents, employees or subcontractors, and for routine maintenance for all elements of the Common Infrastructure that service both the Nugget Property and the County Property.

(C) If the inability to release the Municipal Improvement Bonds is due to solely to any ongoing construction or development operations of County, then County shall be fully responsible to the Constructing Party for the costs to repair damages to Common Infrastructure that is not established as being caused by either party's agents, employees or subcontractors, and for routine maintenance for all elements of the Common Infrastructure that service both the Nugget Property and the County Property.

1. County, Nugget and Construction Manager (if applicable) shall agree upon procedures to use the various contingencies included in the Final Approved Budget during construction of the Project. County, Nugget and Construction Manager (if applicable) agree that the Common Infrastructure contingency will not be used for County or Nugget directed changes, and will only be utilized for additional work and/or changes to the Common Infrastructure that mutually benefits County Property and Nugget Property. County contingency may be used wholly at County's sole discretion for any purpose.
 - i. Notwithstanding the above, costs associated with the blasting and clearing for Common Infrastructure Item 3(f) identified herein, shall only be compensated out of a joint contingency if they are in excess of the limits/quantities identified in Exhibit M, and if they are in areas that directly benefit both the County Property and Nugget Property.

7. Excusable Delay. Whenever performance is required of any party under the terms of this Agreement, that party shall use due diligence to perform and take all necessary measures in good faith to effect the necessary or required performance; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, adverse and

unusual weather conditions not reasonably anticipated, war, civil commotion riots, strikes, picketing, other labor disputes, damage to work in progress by reason of fire or other casualty, or any reasonably unforeseeable cause beyond the reasonable control of such party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually caused to critical path work on the Construction Schedule (an “Excusable Delay”). Notwithstanding the foregoing, lack of funds or causes resulting from lack of funds’ shall not be deemed to be a cause beyond the Control of a party. The provisions of this Section shall not operate to excuse any party from the prompt payment of any monies required by this Agreement

8. Payment Defaults and Remedies. If there shall be any default with respect to Nugget’s or County’s obligation to pay its respective share of the Total Costs or any other costs and expenses for which such party is wholly, jointly or partly responsible with respect to any other item described in this Agreement, in the manner and at the time or times provided in this Agreement (such defaulting party being referred to in this Section 8 as the “Defaulting Party”, and the other party as the “Non-Defaulting Party”), then the Non-Defaulting Party may, but shall not be obligated to, cure such default after fifteen (15) days’ written notice to the Defaulting Party, in which case all amounts paid by the Non-Defaulting Party on behalf of the Defaulting Party shall be immediately due and payable from the Defaulting Party to the Non-Defaulting Party and shall accrue interest at the rate of eight percent (8%) per annum. In addition, the Non-Defaulting Party shall have the immediate right (in addition to any rights enumerated in other sections of this Agreement) to institute suit for collection of the sum due, with interest thereon from the date of default.

9. Conflict Resolution.

- a. If Nugget and County are unable to resolve a disagreement arising out of Sections 4.a. and b. and Sections 5.c., f., h., j. and k. of this Agreement (but expressly excluding payment and liability matters), either Nugget or County may appeal to Deputy Director of DPWES, Capital Facilities (currently Ronald N. Kirkpatrick) to resolve the dispute. The Deputy Director of DPWES, Capital Facilities shall within five (5) business days of the request meet with the representatives of the County and Nugget to hear this dispute and make a determination within three (3) business days thereafter regarding the dispute. If either County or Nugget do not agree with the determination of the Director DPWES, either the County or Nugget may unilaterally appeal that decision within two (2) business days to Rob Walker at Gordon Associates, Inc. (or his designee, to be agreed upon by County and Nugget) to make a determination (“County Engineer”). Said County Engineer shall within five (5) business days meet with the parties to hear this dispute and make a determination within three (3) business days thereafter regarding the dispute. The decision of the County Engineer shall be final and binding. Nugget and County

prospectively waive and release the Director of DPWES and the County Engineer from any and all claims related to any actions taken by those persons in accordance with this Section 9.a., unless such actions were made in bad faith, proven only by clear and convincing evidence upon judicial review.

- b. In the event of a dispute related to the payment and/or liability provisions of Sections 4.d., k., and 6.h. of this Agreement, the parties agree that a swift interim resolution of such disputes is necessary to the successful completion of the Project and this Agreement. As such, the parties shall appoint a senior engineer of Dewberry & Davis or McDonough Bolyard and Peck (or his/her designee if they become unavailable, subject to agreement by County and Nugget) to act as Project Arbitrator with the following role, responsibilities and authority:
 - i. In the event of such a dispute, Nugget or County may file a written appeal to the Project Arbitrator for an interim resolution to the dispute.
 - ii. The Project Arbitrator shall within five (5) business days of the request meet with the representatives of the County and Nugget to hear the dispute and make a determination (“Interim Decision”) within three (3) business days thereafter regarding the dispute.
 - iii. The Interim Decision of the Project Arbitrator shall be immediately binding upon the parties, and the parties shall implement the action identified by the Project Arbitrator within two (2) business days. For Interim Decisions made regarding any payment due, the payment must be made as quickly as possible, but in no event later than fifteen days from the date of the Interim Decision.
 - iv. In the event one party disagrees with the Interim Decision, the aggrieved party shall none-the-less immediately comply with such Interim Decision.
 - v. The Interim Decision shall become finally binding upon the parties unless, within fourteen days of the issuance of the Interim Decision, the aggrieved party provides written notice to the other party of its disagreement with the decision and notifies the other party of its reservation of rights to seek judicial review of the Interim Decision. Judicial Review of the Interim Decision shall be de novo, and need not be immediately filed by the aggrieved party.

- vi. Nugget and County prospectively waive and release the Project Arbitrator from any and all claims related to any actions taken by that person in accordance with this Section 9.b.
- c. The Director of DPWES decision, County Engineer's decision, and the decision of the Project Arbitrator shall be based upon the following criteria (1) the impact and effect on the use, operation, management and value of the Nugget Property and the County Property, (2) to the extent there is a conflict between the design of the buildings, neither design shall be favored; and (3) the decision will be rendered in an unbiased, independent and impartial manner with respect to both County and Nugget.
- d. The Parties shall endeavor, where reasonably possible, to resolve all conflicts at the senior management level before utilizing the conflict procedures outlined in this Section 9.
- e. The Parties may, by mutual agreement, implement such other dispute resolution procedures they deem appropriate during the design and construction of the project. To this extent, the Parties will attempt to outline dispute procedures for "minor" conflicts, and agree that the conflict resolution procedures identified by this Section 9 will only be utilized when significant conflict issues arise.

10. Notice. Any notices, requests and other communications under this Agreement shall be in writing and shall be hand-delivered with receipt therefor, or shall be sent by facsimile with confirming telephone call, or shall be sent by messenger with receipt therefor, or by Federal Express, Express Mail or similar courier service, with guaranteed next-business-day delivery or shall be sent by email with confirming copy sent by Federal Express, Express Mail or similar courier service, with guaranteed next-business-day delivery, with receipt therefor, addressed as follows:

If to County:

Board of Supervisors of Fairfax County, Virginia
12000 Government Center Parkway, Suite 552
Fairfax, Virginia 22035
Attention: County Executive

With a copy to:

Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035-0064

And with a copy to:

Department of Public Works and Environmental Services
Building Design and Construction Division
Attention: Carey Needham, Director
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035

If to Nugget:

Nugget Joint Venture, LC
Attention: Nicholas P. H. Rocks or S. Randall Cohen, Managers
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to:
Michael Rocks
c/o Rocks Engineering Company
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to:

Reed Smith LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, Virginia 22042
Attention: James C. Brennan, Esq.

If to Construction Manager:

ICS-CM LLC
Attention: Michael J. Hellyer
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to:

Michael Rocks
c/o Rocks Engineering Company
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

11. Default; Remedies.

- a. In the event that either Nugget or County defaults on its obligations under this Agreement, and such default continues after fifteen (15) days' written notice of such default (or such other period as may be specifically provided in other sections of this Agreement) has been given to such defaulting party (such defaulting party also being referred as a "Defaulting Party", and the other party as the "Non-Defaulting Party"), then the Non-Defaulting Party shall have such remedies available to it as may be set forth in each specific section above as well as any other remedies available at law or in equity, except that in no event will any party to this Agreement be entitled to recover punitive or consequential damages from any other party.
- b. Reserved.
- c. Notwithstanding, and subject to the limitation of liability and guaranty stated in Section 20, nothing shall preclude County from recovering damages from Construction Manager, for delayed completion of the Project, lost revenue in the form of liquidated damages of \$10,000 (ten thousand dollars) per day, due to the inability to open the Metro Facilities on time, subject to the following conditions ("CM Conditions"): (1) said delay is due to the fault or negligence of Construction Manager; (2) the nearby Metro station is operational and open to the travelling Public; and (3) County has substantially completed the construction on the County owned Parking Garage Facility. However, if CM Conditions (1) and (2) identified above have occurred, and the County's substantial completion of the Parking Garage Facility has been delayed due to fault or negligence of the Construction Manager, then the County shall be entitled to recovery of the liquidated damages for such delays, but only to the extent of proven critical path delay to the completion of the Parking Garage Facility as measured by the dates for completion of the County Critical Schedule Milestones.

12. Standards of Approval. To the extent that this Agreement provides that any approval shall "not be unreasonably withheld, conditioned or delayed" or words to that effect, such approval shall be determined in accordance with the following terms:

Upon receipt of a request for approval or consent under this Agreement by a party to this Agreement (the "Requesting Party"), the other party (the "Requested Party") shall provide an approval or a non-approval with reasons within fifteen (15) days after the request by the Requesting Party. If the Requested Party fails to respond within such fifteen (15) days then the Requested Party

shall be deemed to have approved the request for approval or consent. If the Requested Party provides its non-approval with reasons, then the Requested Party shall state in detail the reasons for its non-approval and the changes reasonably necessary in order for the Requested Party to provide its approval or consent.

13. Lender's Consent. So long as the land owned by a Defaulting Party remains encumbered by a Mortgage of which the Non-Defaulting Party is provided written notice, the Non-Defaulting Party will mail or deliver to the Defaulting Party's Mortgagee, at the address provided to the Non-Defaulting Party and in the manner provided in Section 8, copies of all notices of default permitted or required to be given by the Non-Defaulting Party under and pursuant to the terms and provisions of this Agreement. In connection with any financing obtained by Nugget, County agrees to promptly execute and deliver a commercially reasonable consent to assignment in favor of the Mortgagee.

14. Estoppel Certificates. At any time and from time to time upon the request of any Party or Mortgagee, as the case may be, on or before the date specified in the request therefor, which date shall not be earlier than thirty (30) days from the making of such request, Nugget or County, as applicable, shall execute, acknowledge and deliver to the party making such request a certificate evidencing whether or not:

- a. this Agreement is in full force and effect;
- b. this Agreement has been modified or amended in any respect;
- c. there are any existing defaults affecting or arising hereunder, to the knowledge of the party executing the certificate and specifying the nature of such defaults, if any;
- d. there are, with respect to this Agreement, any sums due pursuant to this Agreement; and
- e. such other information as the requesting party may reasonably request.

Each certificate delivered pursuant to this Paragraph may be relied on by the Party requesting the same and any prospective purchaser or Mortgagee of the requesting Party.

15. Authorized Representative. Each of County and Nugget shall appoint one or more persons to represent it and act as its exclusive agent for all purposes hereunder (each, an "Authorized Representative"). County and Nugget may each, at any time and from time to time, add, remove, replace or otherwise change its designation of any or all of its Authorized Representatives (with or without cause) by giving written notice of such change to the other party. The Authorized Representatives of County or Nugget, as applicable, shall be the only persons authorized to take actions or grant consents on behalf of such party, and any action taken

by an Authorized Representative of a party shall be binding on such party for all purposes. The initial Authorized Representatives for County shall be Heather Diez. The initial Authorized Representatives for Nugget shall be Nicholas P. H. Rocks and Michael R. F. Rocks. County and Nugget may each, at any time and from time to time, appoint one or more persons to act on its behalf in only limited areas, and such person's authority to take actions or grant consents on behalf of such party shall be stated in a written notice to the other party.

16. Final Completion. The Common Infrastructure under this Agreement shall be deemed Finally Complete upon satisfaction of the items set forth on Exhibit L.

17. Insurance. Prior to commencement of and during the design and construction of the Common Infrastructure, Construction Manager (if applicable), design professionals and Development Contractor, must obtain and maintain in full force and effect the policies and levels of insurance identified in Exhibit J. Nugget and County agree to modify such policy requirements if reasonably required for the benefit of the Project. Each such policy of insurance shall expressly provide that such policy shall not be cancelled without providing at least thirty (30) days prior written notice to County. Nugget shall be responsible to provide to County evidence of all the required insurance coverages (e.g., certificates of insurance) of Construction Manager (if applicable) and design professionals prior to commencing the design of the Common Infrastructure improvements on the Property. Constructing Party will be responsible to provide the Non-Constructing Party evidence of all the required insurance coverages of the Development Contractor prior to commencing construction of the Common Infrastructure. In addition, County and Nugget agree to maintain in full force and effect the limits and policies of insurance identified by the insurance certificates attached hereto as Exhibit I. County and Nugget agree to provide each other with prompt written notice of any changes to the policies of insurance identified in Exhibit I, and agree to use all reasonable means to maintain substantially similar coverage to that provided in Exhibit I throughout the duration of the Project.

18. Indemnification by Construction Manager. Subject to the limitations of liability and guaranty stated in Section 20, the Construction Manager, pursuant to its agreement with Nugget, agrees to indemnify and hold harmless the County from any and all claims for bodily injury, personal injury, and/or property damage, which result from the negligent acts, errors or omissions of the Construction Manager. The obligations of the Construction Manager shall not extend to damages, loss or injury, including death, to persons or property that are caused solely by any action, error, omission or operation of the County. Further, the obligations of the Construction Manager shall not extend to the proportion of damages, loss or injury, including death, to persons or property that may arise or be incurred as a result of any action, error, omission or operation of the County's separate contractor(s), and their employees, agents, servants, and/or representatives. The indemnification obligations of the Construction Manager identified herein shall survive the termination or expiration of the Construction Manager Agreement.

19. Termination or Conversion for Convenience. The County may terminate this Agreement for convenience in the event that the Phase 2 Metro Rail Line Construction is substantially delayed (in excess of twelve (12) months) or cancelled. Upon such termination, Nugget and Construction Manager shall be reimbursed by County, in accordance with the Infrastructure Percentage, for all costs incurred in furtherance of the Project, plus a reasonable profit on work performed, and any agreed upon termination expenses. Nugget and Construction Manager, as applicable, shall provide to County within thirty (30) days of such termination an itemized listing of expenses incurred and all work product/Instruments of Service prepared for the Project. Payment for such Termination expenses shall be made in accordance with the payment provisions herein.

20. Limitation of Liability and Guaranty.

- a. Construction Manager shall defend, prosecute and/or settle all Project Claims related to the design of the Project, and all Project Claims related to construction of the Project if acting as Constructing Party, as it sees fit (unless approval of County or Nugget is required elsewhere in this Agreement) during the course of the Project.
- b. To the extent, and only to the extent, the Project Claims are due to the negligent acts, errors or omissions of the Construction Manager, and only in the event that the contingencies available on the Project and the assets or insurance of the Construction Manager are insufficient to cover such Project Claims, the Guaranty Agreement attached hereto as Exhibit K shall cover the liability for all such Project Claims up to a guaranteed limit, in the aggregate, over the life of the Project, of One Million Dollars (\$1,000,000) as provided in Section 21 below. County agrees that the Guaranty Agreement, if applicable, shall only be exercised after: (1) the Construction Manager has exhausted any and all contingencies available on the Project, and further, only after reasonable efforts to recover damages caused by the Project Claims due to the full or partial negligent acts, errors or omissions of the Construction Manager are made from applicable indemnity agreements or insurance (e.g., Construction Manager's policies of insurance, contractors, engineers, architects, etc.); and (2) the County has thereafter exhausted all efforts to recover damages caused by the Project Claims from Construction Manager's policies of insurance.
- c. Notwithstanding anything to the contrary, Nugget shall have no liability or obligations with respect to the Construction Manager's negligence, liabilities or obligations under this Agreement.

21. Guaranty. The RDR Family LLC, a Virginia limited liability company (“Guarantor”) shall execute and deliver the guaranty agreement (“Guaranty Agreement”) attached hereto as **Exhibit K** to guaranty (1) the payment, if any, of the Construction Manager’s liability under Section 4.g and 6.i up to the maximum of One Million Dollars (\$1,000,000) and (2) the payment obligations of Nugget pursuant to Sections 4.k., 6.h. and 6.j of this Agreement.

22. Miscellaneous.

- a. Each and every part of this Agreement, the CDP/FDP and the Common Infrastructure Approvals are presumed to be of some effect and is not to be treated as meaningless, but in the event of a conflict between the CDP/FDP or any Common Infrastructure Approvals, if it is not reasonable to interpret the conflicting provisions that is consistent with the intent of the parties and in a non-contradictory manner, then in such event the Common Infrastructure Approvals shall control.
- b. It is understood and agreed that the County has entered into this Agreement solely in its proprietary capacity and not in its governmental or regulatory capacity. The County’s entering into this Agreement in its proprietary capacity shall in no manner be deemed to affect, limit or obligate the Board of Supervisors of Fairfax County in its governmental or regulatory capacity and/or the County of Fairfax, Virginia, or its agencies, departments or divisions thereof with respect to any actions the foregoing may desire or be requested to undertake that pertain in any manner to this Agreement and the provision hereof, including without limitation, any approval requests, inspections or other matters involving governmental authorities.
- c. This Agreement shall be binding upon and be for the benefit and burden of the parties and their successors and assigns in title; provided, however, prior to Final Completion of the Common Infrastructure, Nugget shall remain liable for all proffered infrastructure obligations, regardless of sales of portions of the Nugget Parcel to third parties unless Nugget sells the entire Nugget Parcel to an entity that is pre-approved by the County.
- d. This Agreement may not be amended except by written instrument executed by all parties.
- e. No party shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any

instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other-such right.

- f. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.
- g. If any term, covenant, obligation, provision or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement or the application of such term, covenant, obligation, provision or condition to any other person or circumstance shall not be affected thereby, and each such term, covenant, obligation, provision or condition shall be valid and enforceable to the fullest extent permitted by law. The parties prospectively agree that the provisions of Section 5 herein are not so integral to the to the whole of the Agreement that, to the extent such provisions are deemed unenforceable in whole or in part, the remainder of the Agreement shall remain in full force and effect.
- h. Nothing contained herein shall create a contractual relationship with or cause of action under this Agreement in favor of a third party against either the County or Nugget.
- i. In the event of a conflict between the terms and conditions of this Agreement and the REEA, the terms and conditions of this Agreement shall take precedence.
- j. To the extent so required by the law of the Commonwealth of Virginia, any and all of County's financial obligations under this Agreement are subject to appropriations by the Fairfax County Board of Supervisors.
- k. This Agreement may be signed in two (2) or more counterparts, each of which shall be deemed an original and all of which together with shall constitute one and the same instrument.
- l. The parties hereto agree that they will execute any further assurances hereof as may be requisite. Each party agrees to deal with the others in good faith in the implementation of this Agreement.
- m. The captions and headings herein are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.
- n. Each of the exhibits attached to this Agreement is hereby made a part of this Agreement as fully as if set forth in the text of this Agreement.

- o. To the extent that either party is performing any work hereunder, it shall be obligated to coordinate with and keep the other party reasonably informed.
- p. In the event of any legal action or arbitration proceeding between the parties regarding this Agreement, the prevailing party shall be entitled to payment by the non-prevailing party of the prevailing party's reasonable attorneys' fees and litigation or arbitration expenses as determined in the course of the proceeding.
- q. The parties to this Agreement waive the right to a trial by jury and agree that any and all disputes resolved through litigation will be tried by a Judge and not a jury.
- r. If any date upon which action is required under this Agreement shall be a Saturday, Sunday or legal holiday, the date of such action shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday.

[Signature Pages Follow]

NUGGET:

NUGGET JOINT VENTURE, LC, a
Virginia limited liability company

By: Allen & Rocks, Inc., a
Delaware corporation, its manager

By:
Name: _____
Its: _____

COMMONWEALTH OF VIRGINIA
City/County of _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____ 2014,
by _____, _____ of Allen & Rocks, Inc. as the Manager of Nugget
Joint Venture, LC.

In testimony whereof I have affixed my official seal on the date first above written.

Notary Public

My Commission Expires: _____
Notary Registration Number: _____

COUNTY:

**BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA**, acting in its proprietary
capacity and not its governmental or regulatory
capacity

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA

City/County of _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____ 2014,
by _____ as _____ of Board of Supervisors of Fairfax
County.

In testimony whereof I have affixed my official seal on the date first above written.

Notary Public

My Commission Expires: _____

Notary Registration Number: _____

EXHIBIT A
NUGGET AND COUNTY PROPERTY

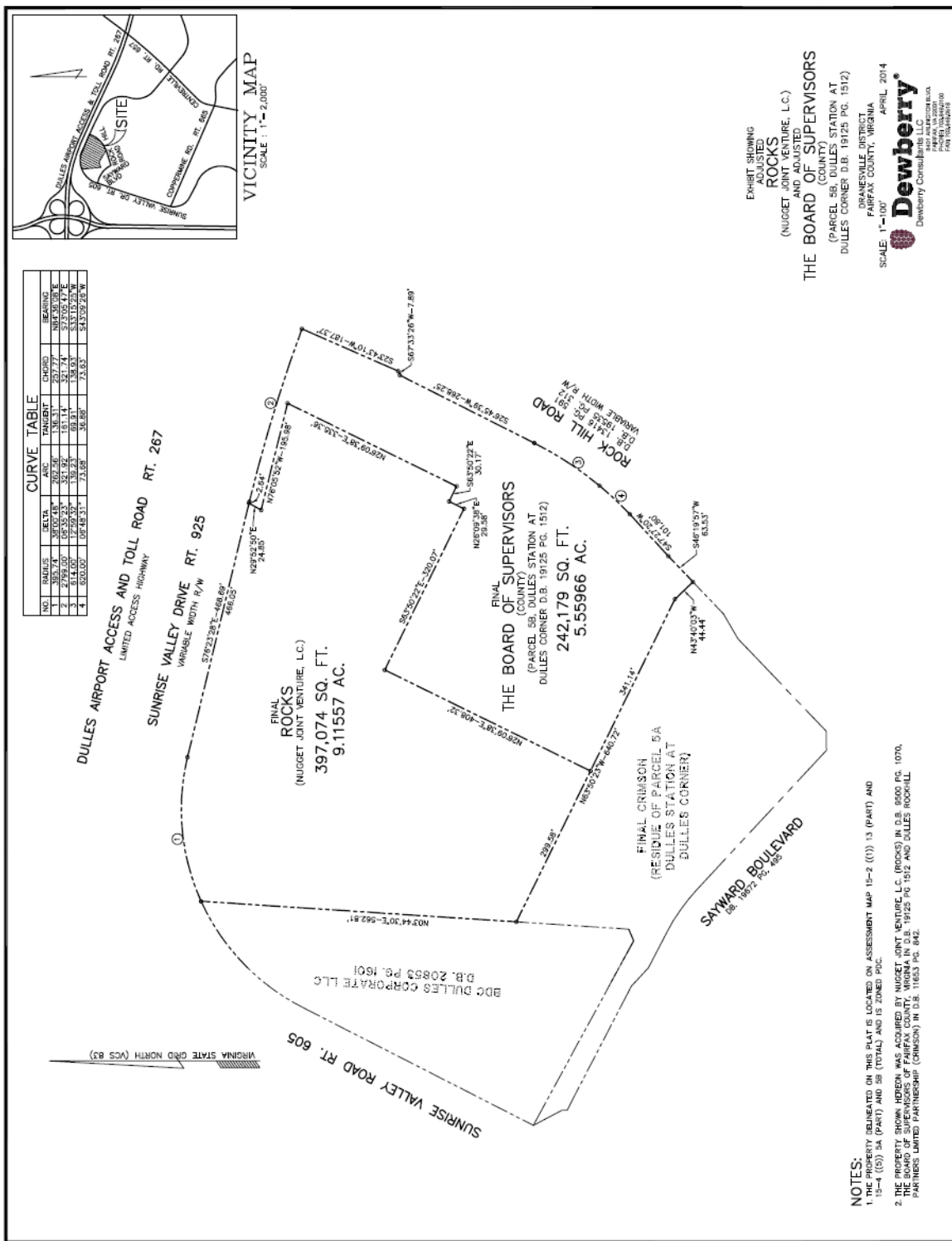


EXHIBIT B
RESERVED

EXHIBIT C

BUDGET AND

TOTAL COST OF COMMON INFRASTRUCTURE WITH PERCENTAGES

IDA #	Item	Nugget JV	Others	County	Design Soft Costs (Pre-Construction)	Design Soft Cost (Subsequent to Site Plan approval)	Hard Cost	County Share (Soft and Hard Total)
3a.i	Road Improvements:							
3a.i	Sunrise Valley Drive	50%	0%	50%	\$293,167	\$220,038	\$2,170,000	\$1,341,603
3a.ii	Carta Way	50%	0%	50%	\$128,345	\$96,330	\$950,000	\$587,338
3a.iii	North-South Road	50%	0%	50%	\$85,113	\$63,882	\$630,000	\$389,498
3a.iv	East-West Road - Carta Way to North - South Road	25%	50%	25%	\$49,987	\$37,518	\$370,000	\$114,376
3a.v	East-West Road - North-South Road to Private Drive	50%	50%	0%	\$49,987	\$37,518	\$370,000	\$0
3c	Traffic Signals:							
3c.v(1)	Sunrise Valley Drive / North-South Road	50%	0%	50%	\$54,040	\$40,560	\$400,000	\$247,300
3c.v(2)	Sunrise Valley Drive / Carta Way	50%	0%	50%	\$54,040	\$40,560	\$400,000	\$247,300
3c.v(4)	Carta Way / East-West Road	50%	0%	50%	\$54,040	\$40,560	\$400,000	\$247,300
3e	Stormwater Improvements							
	On-Site	62%	0%	38%	\$249,935	\$187,590	\$1,850,000	\$869,260
	Off-Site	62%	0%	38%	\$135,100	\$101,400	\$1,000,000	\$469,870
3f	County's Garage Site (Derivative of Site Work required for overall site)	62%	0%	38%	\$445,830	\$334,620	\$3,300,000	\$1,550,571
	Subtotal:				\$1,600,000	\$1,200,000	\$11,840,000	\$6,064,414
	Design/Soft Cost:				\$1,600,000	\$1,200,000	\$2,800,000	
	Subtotal:						\$14,640,000	
	Common Infrastructure Contingency (10%):						\$1,464,000	\$556,320
	Subtotal:						\$16,104,000	
	CM Fee (4%)						\$656,420	\$328,210
	TOTAL:						\$16,760,420	
	County Contingency:							\$500,000
	Total County Share:							\$7,448,944
*Basis of Cost: Downey & Scott, LLC Evaluation Cost Estimate Report April 14, 2014								

EXHIBIT D
CONSTRUCTION SCHEDULE

EXHIBIT D

COUNTY CRITICAL MILESTONES

Common Infrastructure Site Plan Approval, Including Bonding and Permits: July 30, 2015

County's Garage Site Ready: March 1, 2016

Common Infrastructure Roadways Complete for Public Use: May 15, 2018

INFORMATIONAL MILESTONES

Common Infrastructure Site Plan Submittals and Reviews: August 15, 2014 – July 1, 2015

Common Infrastructure 100% Cost Estimate: July 30, 2015

Common Infrastructure Bidding, Award, and Notice to Proceed: August 1, 2015 – Nov 1, 2015

County Garage Site Plan Submittals and Reviews: June 1, 2015 – December 1, 2015

County Garage Site Plan Approval, Including Bonding and Permits: December 15, 2015

County Garage Bidding, Award, and Notice to Proceed: December 15, 2015 – March 15, 2016

County Garage Complete: March 1, 2018

MWAA Innovation Center Station Silver Line Operational: June 1, 2018

EXHIBIT E

MAJOR DECISIONS

“Major Decisions” shall mean any of the following matters:

- Amendments/Change Orders to the Construction Contract. For amendments/change orders that impact the Non-Constructing Party’s share of the Infrastructure Percentage in the amount of \$50,000 or less, the Authorized Representative’s approval is required. For amendments/change orders in excess of the Non-Construction Party’s Infrastructure Percentage of \$50,000, if the County is Non-Constructing Party, then approval from the Director of the Department of Public Works and Environmental Services, Building Design and Construction Division, is required, if the Non-Constructing Party is Nugget, then approval from Nugget Authorized Representative is required.
- Settling any claims with the Development Contractor.
- Amendments to the Construction Contract impacting the Construction Schedule and resulting in any single change order that results in a three (3) business day delay, or cumulatively for multiple change orders for more than seven (7) business days.
- Changing the Common Infrastructure Approval such that the proposed layout of the Common Infrastructure Improvements is changed.
- Termination of Construction Manager, Development Contractor or any other contractor or consultant hired by Construction Manager or Constructing Party.
- Changes in Key Personnel of Nugget, County, Construction Manager, or Development Contractor.
- Any funds distributed from County contingency funds must have prior approval of the County.
- Any request for time extension or a delay claim that impacts delivery schedule of County Garage Site and subsequent improvements needed to be in place for issuance of a non-RUP for the County garage.
- Change in one line item of the Final Approved Budget that aggregates to a variance of more than 5% of the individual line item.

EXHIBIT F

PROJECT MANAGEMENT FEE PAYMENT

The Project Management Fee shall be paid to the Constructing Party monthly with each payment of the Pre-Construction Soft Costs (capped per Exhibit C), and the Soft Costs and Hard Costs of construction. Once construction commences, Payment of the Project Management Fee shall be made until there remains \$100,000 of the Project Management Fee at which time the Project Management Fee payments will cease.

The remaining \$100,000 of the Project Management Fee shall be paid to Constructing Party upon Final Completion of the Common Infrastructure.

EXHIBIT G

DRAW REQUEST REQUIREMENTS

A "Draw Request" means an executed written application signed by an Authorized Representative on behalf of the Constructing Party and furnished to County or Nugget, as applicable, setting forth the amount of proceeds desired, together with

Applications for payments in standard AIA form (AIA G702 and AIA G703) or in such other form as may be required by Construction Contract, or reasonably approved by County or Nugget, as applicable, containing a breakdown by trade and/or other categories (Pre-Construction Soft Costs, Soft Costs and Hard Costs) acceptable to County or Nugget, as applicable, executed and certified by each contractor, accompanied by invoices.

Copies of notarized partial lien and claim waiver forms executed by each vendor, consultant, contractor and each appropriate subconsultant, subcontractor, supplier and materialman.

EXHIBIT H
RESERVED

EXHIBIT I
RESERVED

EXHIBIT J

INSURANCE REQUIREMENTS

I. Architect/Engineer Insurance Requirements:

1. The Architectural/Engineering (A/E) service firm(s) shall be responsible for their professional services. The A/E firm assumes all risk of damage or injury to its property or persons employed by the firm or in connection with the work contracted for, and of all damage or injury to any person or property, resulting from the A/E firms errors, omissions or negligent act(s).
2. The A/E shall, during the continuance of all work under the Contract provide the following:
 1. Maintain statutory Workers' Compensation insurance in limits of not less than that required statute or \$100,000 (whichever is greater), and Employer's Liability insurance in limits of not less than \$1,000,000, to protect the A/E from liability or damages for any injuries (including death and disability) for any and all of its employees, including any and all liability or damage which may arise by virtue of statute or law in force within the Commonwealth of Virginia.
 2. The A/E agrees to maintain Commercial General Liability insurance in the minimum amount of \$1,000,000 per occurrence/\$2,000,000 aggregate, to protect the A/E, and the interests of Construction Manager, Nugget and County, their officers and employees against any and all injuries to third parties, including bodily injury and personal injury. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the construction of the project.
 3. The A/E agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the minimum amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the A/E. In addition, all mobile equipment used by the A/E in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.
 4. The A/E firm agrees to maintain Professional Liability insurance in the limits of \$2,000,000 per occurrence or claim/aggregate per year. This coverage shall continue in force for five years following completion of construction of the project.

5. The A/E firm agrees to accept liability for and bear the costs of change orders to the construction contract caused by errors, omissions, or negligent acts whose accumulative cost to the Project exceeds two percent of the construction value. Cost of omissions will be limited to costs in excess of the bid amount had the omitted item been included in the bid. Any such determination by the County is subject to the provisions of Article 7.

6. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the A/E has been issued on a "claims made" basis, the A/E must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The A/E must either:

- (a) Agree to provide certificates of insurance evidencing the above coverages for a period of five years after final payment for the professional services contract. This certificate shall evidence a "retroactive date" no later than the beginning of the A/E's or sub-consultant's work under this contract, or
- (b) Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

7. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies with lesser limits.

8. A/E shall also provide evidence of an Excess or Umbrella Liability Policy in the minimum amount of \$2,000,000.

9. (a) The A/E agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.

- (b) European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the A/E's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating.

10. A/E shall indemnify, keep and save harmless Construction Manager, Nugget and the County, their agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, theft, suits, liabilities, judgments, costs and expenses which may otherwise accrue against Construction Manager, Nugget or the County in consequence of the granting of this Agreement or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the A/E or his or her employees, or that of any subcontractor or his or her employees, if any; and the A/E shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against Construction Manager, Nugget or the County in any such action, the A/E shall, at his or her own expense, satisfy and discharge the same. A/E expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by the Architect, shall in no way limit the responsibility to indemnify, keep and save harmless and defend Construction Manager, Nugget and the County as herein provided.
11. The A/E will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.
12. The A/E will secure and maintain all insurance certificates of its sub-consultants which shall be made available on demand.
13. The A/E will provide on demand certified copies of all insurance coverages related to the Contract within ten business days of demand. These certified copies will be sent directly from the A/E's insurance agent or representative.
3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45-day written notice to Construction Manager. The A/E shall furnish a new certificate prior to any change or cancellation date. The failure of the A/E to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
4. Compliance by the A/E and all sub-consultants with the foregoing requirements as to carrying insurance shall not relieve the A/E and all sub-consultants of their liabilities provisions of the Contract.
5. Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude Construction Manager, Nugget or the County from supervising and/or inspecting the project as to the end result.

6. Nothing contained in the specifications shall be construed as creating any contractual relationship between any sub-consultants and Construction Manager, Nugget or the County. The A/E shall be as fully responsible to Construction Manager, Nugget and the County for the acts and omissions of the sub-consultants and of persons employed by them as it is for acts and omissions of person directly employed by it.
7. Precaution shall be exercised by the A/E at all times for the protection of persons (including employees) and property under their control.
8. The A/E and all sub-consultants are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

II. Development Contractor ("Contractor") Insurance Requirements

1. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.
2. The Contractor shall, during the continuance of all Work under the Contract provide the following:
 1. Maintain statutory Workers' Compensation insurance in limits of not less than that required statute or \$100,000 (whichever is greater), and Employer's Liability insurance in limits of not less than \$1,000,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia. This policy must include a documented waiver of subrogation in favor of Construction Manager, its subsidiaries and affiliates.
 2. The Contractor agrees to maintain Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate, to protect the Contractor, its Subcontractors, and the interest of Construction Manager, Nugget and the County, and each of their officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted Work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and

underground hazards, where required. Such insurance will also provide coverage for claims arising from the exposures of

- premises or ongoing operations,
- Product-completed operations which shall be maintained through the longer of the statute of limitations or repose for construction defect and products liability claims in Virginia.
- Independent contractors and
- Contractual liability

The Commercial General Liability must be primary and any of County's, Nugget's or Construction Manager's insurance shall be considered excess for the purpose of responding to claims.

3. The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted Work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

4. **BUILDER'S RISK POLICY:**

The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect the County, Construction Manager, Nugget and Contractor and Subcontractors against loss caused by the perils insured in the amount of 100% of the insurable value of the Contract less the value of that portion of the Work which has been accepted as substantially complete. Such insurable value shall reflect any increases to the contract amount through Change Orders. Policy to be in Builder's Risk Completed Value forms, including the following:

1. Policies shall be written to include the names of contractors and Owner and the words "as their interest may appear";
2. all insurance shall be in effect on or before the date when construction work is to commence; and
3. all insurance shall be maintained in full force and effect until the substantial completion of the Work or any portions thereof.
5. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying policies.

6. Contractor agrees to maintain Environmental Impairment Liability including sudden and accidental pollution and in transit coverage as well as coverage for storage at site.
7. Contractor shall also provide evidence of an Excess or Umbrella Liability Policy in the minimum amount of \$2,000,000.
8. The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the Owner, the Contractor and Subcontractors.
9. Rating Requirements:
 1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VII
 2. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating.
10. Hold harmless and Indemnification:

"The Contractor hereby agrees to protect, defend, indemnify and hold harmless Construction Manager, Nugget and County, and each of their officers, agents and all employees and volunteers, from any and all claims for bodily injury, personal injury, and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney fees, and the cost of appeals arising out of any claims or suits which result from errors, omissions, or negligent acts of the Contractor, his Subcontractors and their agents and employees."
11. The Contractor will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein including the Workers Compensation Waiver of Subrogation and the General Liability Additional Insured Endorsement.
12. The Contractor represents and warrants that the Subcontractors hired by the Contractor shall carry insurance as set forth in this

Contract prior to permitting the Subcontractors to commence Work. The Contractor will secure and maintain all insurance certificates of its Subcontractors which shall be made available to the Owner on demand.

13. The Contractor will provide on demand certified copies of all insurance coverages related to the Contract within ten (10) business days of demand by the Owner. These certified copies will be sent to the Owner from the Contractor's insurance agent or representative.
3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty five (45) day written notice to the Construction Manager. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
4. Compliance by the Contractor and all Subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liabilities provisions of the Contract.
5. Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the Construction Manager, Nugget or County from supervising and/or inspecting the Project as to the end result. The Contractor shall assume all on the job responsibilities as to the control of persons directly employed by it and of the Subcontractors.
6. Nothing contained in the Specifications shall be construed as creating any contractual relationship between any Subcontractor and the Construction Manager, Nugget or County. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
7. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
8. The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91 956, as it may apply to this Contract.
9. Any loss insured under subparagraph 2.4 is to be adjusted with the Construction Manager and made payable to the Construction Manager as trustee for the requirements of any applicable mortgagee clause. The

Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub subcontractors in similar manner.

10. When the Construction Manager finds it necessary to occupy or use a portion or portions of the Work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the Construction Manager and Contractor. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of Work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
11. The County, Nugget and Construction Manager, and each of their officers and employees shall be named as an "additional insured" and "loss payee" on the Automobile, General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the County/Construction Manager/Nugget (as appropriate) may possess." (Use "loss payee" where there is an insurable interest).

The General Liability additional insured endorsement must be attached and provide coverage for both ongoing and product/completed operations to the benefit of the additional insured. The additional insured coverage must provide coverage at least as broad as the ISO CG 2010 11/85 form "Additional Insured – Owners, Lessees or Contractors" and provide coverage to the full extent of the actual limits of the Contractor's coverage even if such actual limits exceed the minimum limits required by this Contract.

12. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words "endeavor to" and ". . . but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.

III. Construction Manager Insurance Requirements

1. The Construction Manager ("CM") shall be responsible for its professional services. The CM firm assumes all risk of damage or injury to its property or persons employed by the firm or in connection with the work contracted for, and of all damage or injury to any person or property, resulting from the CM firm's errors, omissions or negligent act(s).

2. The CM shall, during the continuance of all work under the Contract provide the following:
 1. Maintain statutory Workers' Compensation insurance in limits of not less than that required statute or \$100,000 (whichever is greater), and Employer's Liability insurance in limits of not less than \$1,000,000, to protect the CM from liability or damages for any injuries (including death and disability) for any and all of its employees, including any and all liability or damage which may arise by virtue of statute or law in force within the Commonwealth of Virginia.
 2. The CM agrees to maintain Commercial General Liability insurance in the minimum amount of \$1,000,000 per occurrence/\$2,000,000 aggregate, to protect the CM, and the interests of Nugget and County, their officers and employees against any and all injuries to third parties, including bodily injury and personal injury. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the construction of the project.
 3. The CM agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the minimum amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the CM. In addition, all mobile equipment used by the CM in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.
 4. The CM firm agrees to maintain Professional Liability, Errors and Omissions insurance on a Project Specific Basis in the limits of \$3,000,000 per occurrence or claim/aggregate. This coverage shall continue in force for five years following completion of construction of the project.
 5. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the CM has been issued on a "claims made" basis, the CM must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The CM must either:

- (a) Agree to provide certificates of insurance evidencing the above coverages for a period of five years after final payment for the professional services contract. This certificate shall evidence a "retroactive date" no later than the beginning of the CM's or sub-consultant's work(if applicable) under this contract, or
 - (b) Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 6. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies with lesser limits.
- 7. CM shall also provide evidence of an Excess or Umbrella Liability Policy in the minimum amount of \$2,000,000.
- 8.
 - (a) The CM agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 - (b) European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the CM's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating.
- 9. CM shall indemnify, keep and save harmless Nugget and the County, their agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, theft, suits, liabilities, judgments, costs and expenses which may otherwise accrue against Nugget or the County in consequence of the granting of this Agreement or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the CM or his or her employees, or that of any subcontractor or his or her employees, if any; and the CM shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against Nugget or the County in any such action, the CM shall, at his or her own expense, satisfy and

discharge the same. CM expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by the Architect, shall in no way limit the responsibility to indemnify, keep and save harmless and defend Nugget and the County as herein provided.

10. The CM will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.
11. The CM will secure and maintain all insurance certificates of its sub-consultants (if any) which shall be made available on demand.
12. The CM will provide on demand certified copies of all insurance coverages related to the Contract within ten business days of demand. These certified copies will be sent directly from the CM's insurance agent or representative.
3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45-day written notice to Nugget and the County. The CM shall furnish a new certificate prior to any change or cancellation date. The failure of the CM to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
4. Compliance by the CM and all sub-consultants with the foregoing requirements as to carrying insurance shall not relieve the CM and all sub-consultants of their liabilities provisions of the Contract.
5. Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude Nugget or the County from supervising and/or inspecting the project as to the end result.
6. Nothing contained in the specifications shall be construed as creating any contractual relationship between any sub-consultants and Nugget or the County. The CM shall be as fully responsible to Nugget and the County for the acts and omissions of the sub-consultants and of persons employed by them as it is for acts and omissions of person directly employed by it.
7. The County and Nugget, and each of their officers and employees shall be named as an "additional insured" and "loss payee" on the Automobile, General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the County/Nugget (as appropriate) may possess." (Use "loss payee" where there is an insurable interest).

The General Liability additional insured endorsement must be attached and provide coverage for both ongoing and product/completed operations to the benefit of the additional insured. The additional insured coverage must provide coverage at least as broad as the ISO CG 2010 11/85 form “Additional Insured – Owners, Lessees or Contractors” and provide coverage to the full extent of the actual limits of the CM’s coverage even if such actual limits exceed the minimum limits required by the Contract between the CM and Nugget.

8. Precaution shall be exercised by the CM at all times for the protection of persons (including employees) and property under their control.
9. The CM and all sub-consultants (if any) are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

EXHIBIT K
NUGGET GUARANTY

GUARANTY

THIS GUARANTY (hereinafter referred to as this “Guaranty”) is made this ____ day of _____, 2014 (“Effective Date”) by THE RDR FAMILY LLC, a Virginia limited liability company (“Guarantor”) to and for the benefit of BOARD OF SUPERVISORS OF FAIRFAX THE COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia in its proprietary capacity, and not in its governmental or regulatory capacity (“County”).

W I T N E S S E T H:

WHEREAS, the County and Nugget Joint Venture, LC, a Virginia limited liability company (“Nugget”) entered into that certain Infrastructure Development Agreement dated _____, 2014 (“Infrastructure Agreement”).

WHEREAS, pursuant to Section 21 of the Infrastructure Agreement, Guarantor has agreed to guarantee (1) the payment, if any, of the Construction Manager’s liability under Section 4.g and 6.i of the Infrastructure Agreement up to the maximum of One Million Dollars (\$1,000,000) and (2) the payment obligations of Nugget under Sections 4.k., 6.h. and 6.j. of the Infrastructure Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Recitals. The recitals set forth above are hereby incorporated into this Guaranty as if fully set forth herein.

2. Guaranty. Guarantor hereby guarantees to the County the payment (1) if any, of the Construction Manager’s liability under Sections 4.g and 6.i of the Infrastructure Agreement to the extent, and only to the extent, the Project Claims (as defined in the Infrastructure Agreement) are due to the negligence of the Construction Manager, and only in the event that the contingencies available on the Project (as defined in the Infrastructure Agreement) and the assets or insurance of the Construction Manager are insufficient to cover such Project Claims, and then only up to a guaranteed limit, in the aggregate, over the life of the Project, of One Million Dollars (\$1,000,000) and (2) the payment obligations of Nugget set forth under Sections 4.k., 6.h. and 6.j. of the Infrastructure Agreement (collectively, the “Guaranteed Obligation”).

3. Representations. Guarantor hereby represents and warrants to the County that (a) Guarantor is duly organized and validly existing in good standing under the laws of the Commonwealth of Virginia, (b) the execution, delivery and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporation action, (c) Guarantor has the full power, authority and legal right to execute and deliver, and to perform and observe the provisions of this Guaranty including the payment of all moneys hereunder, and (d) this Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable in accordance with its terms.

4. Limit on Remedies. County agrees that it will not enforce this Guaranty until the County has exhausted any and all contingencies available on the Project, and further, only after reasonable efforts to recover damages caused by the Project Claims due to the Construction Manager's negligence, are made from applicable insurance or other third parties (e.g., Construction Manager's policies of insurance, contractors, engineers, architects, etc.).

5. Notices. Any notices given by any party hereunder shall be in writing and shall be duly given on the first business day after prepaid deposit for overnight delivery by a national overnight courier service. Any such notice is to be addressed to the appropriate party at the address set forth below:

If to Guarantor: The RDR Family LLC
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to: Michael Rocks
c/o Rocks Engineering Company
1960 Gallows Road, Suite 300
Vienna, Virginia 22182

And with a copy to: Reed Smith LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, Virginia 22042
Attention: James C. Brennan, Esq.

If to County: Board of Supervisors of Fairfax County, Virginia
12000 Government Center Parkway, Suite 552
Fairfax, Virginia 22035
Attention: County Executive

With a copy to: Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064

And with a copy to: Department of Public Works and Environmental Services
Building Design and Construction Division
Attention: Carey Needham, Director
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035

6. Savings Clause. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

7. Modifications. This Guaranty may not be modified, altered or amended nor may any provision hereof or rights hereunder be waived, except by an instrument in writing signed by the person or entity against which such modification, alteration, amendment or waiver is sought to be enforced.

8. Binding Effect. This Guaranty shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties hereto.

9. Governing Law. The interpretation and construction of this Guaranty, and all matters relating hereto, shall be governed by the laws of the Commonwealth of Virginia without giving effect to the conflicts of law principles thereof

10. Termination. This Guaranty shall terminate and become null and void upon the Common Infrastructure under the Infrastructure Agreement being deemed Finally Complete upon satisfaction of the items set forth on Exhibit L of the Infrastructure Agreement. Upon termination, County shall promptly return the original of this Guaranty to the Guarantor marked cancelled.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

THE RDR FAMILY LLC,
a Virginia limited liability company

By: _____
Name: _____
Its: _____

EXHIBIT L

FINAL COMPLETION

A certificate from the engineer of record that the Common Infrastructure has been completed in accordance with the plans and specifications.

Any inspection, if required, from all applicable Governmental Authorities for all portions of the Common Infrastructure are completed.

Constructing Party shall have furnished copies of all final waivers of claims and liens and sworn statements from the Development Contractor, other contractors, subcontractors and material suppliers for contracts in excess of \$5,000.

An affidavit of Construction Manager stating that each person providing any material or performing any work in connection with the Project has been paid in full.

All requirements for the issuance of final payment pursuant to the Construction Contract have been completed and provided to Construction Manager or Constructing Party.

EXHIBIT M

DEPICTION OF COMMON INFRASTRUCTURE

IDA # 3a Road Improvements:

IDA #3a.i Sunrise Valley Drive

The scope of the Work is from North of the driveway at 13750 Sunrise Valley Drive to the West side of Dulles Station Boulevard as shown on the proposed roadway plans by Dewberry and Associates # C7 and in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County final approved and permitted site plans.

Work includes:

- Engineering Design, Layout and Surveying
- E & S Controls and maintenance
- Demolition of existing roadway as conditions require.
- Rough and Final grading to the County approved grading plan
- Clearing & Grubbing
- Remove and replace all existing curb & gutter.
- Remove existing median and construct new median
- Streetlight, utility and fiber optic relocations, new streetlights and DVP ductbank only.
- Street trees and landscaping / Streetscape as shown on CDP/FDP drawings L5A and L5B or as required on the site plan
- Street identification signage only. Way finding, Metro signage and VDOT Signage by others.
- Signalization (as identified in the Proffers)
- Project Stormwater conveyance to SWM Pond
- 50%/50% cost sharing

IDA #3a.ii Carta Way

The scope of the Work is from the face of curb on the South side of Sunrise Valley Drive to the South side of the intersection with East West Road as shown on the proposed roadway plans by Dewberry and Associates # C7 and in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County final approved and permitted site plans.

Work Includes:

- Engineering Design, Layout and Surveying
- E & S Controls and maintenance
- Rough and Final grading to the County approved grading plan
- Clearing & Grubbing
- Demolition of existing Rock Hill Road and traffic circle to the extent shown on CDP/FDP drawing C3.
- Construct new road from face of curb on South side of Sunrise Valley Drive to the South side of the intersection with East-West Road
- S/W on East side
- Roadway from face of curb on West side (west side curb and gutter is part of Counties Kiss and Ride)
- Excludes Kiss and Ride, Station Metro Plaza, S/W, and bus shelters

Street trees and landscaping / Streetscape as shown on CDP/FDP drawings L5A and L5B or as required on the site plan
Street identification signage only. Way finding, Metro signage and VDOT Signage by others.
Signalization (as identified in the Proffers)
Project Stormwater conveyance to SWM Pond
50%/50% cost sharing
Concrete bus bays
Dominion VP Duct banks; not circuits
50%/50% cost sharing

IDA #3a.ii North – South Road

The scope of the Work is from the face of curb on the South side of Sunrise Valley Drive to the North side of the intersection with East West Road as shown on the proposed roadway plans by Dewberry and Associates # C7 and in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County final approved and permitted site plans.

Work Includes:

Engineering Design, Layout and Surveying
E & S Controls and maintenance
Rough and Final grading to the County approved grading plan
Clearing & Grubbing
Construct new road from south side of Sunrise Valley Drive to the North side of the intersection with East West Road.
Street trees and landscaping / Streetscape as shown on CDP/FDP drawings L5A and L5B or as required on the site plan
Street identification signage only. Way finding, Metro signage and VDOT Signage by others.
Signalization (as identified in the Proffers)
Project Stormwater conveyance to SWM Pond
50%/50% cost sharing

IDA #3a.iv East - West Road – Carta Way to North – South Road

The scope of the Work is from the face of curb on the West side of Carta Way to the West side of North South Road as shown on the proposed roadway plans by Dewberry and Associates # C7 and in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County final approved and permitted site plans.

Work Includes:

Engineering Design, Layout and Surveying
E & S Controls and maintenance
Demolition of existing roadway as conditions require.
Rough and Final grading to the County approved grading plan
Clearing & Grubbing
Construct new road from West side of Carta Way to the West side of North South Road

Street trees and landscaping / Streetscape as shown on CDP/FDP drawings L5A and L5B or as required on the site plan
Street identification signage only. Way finding, Metro signage and VDOT Signage by others.
Signalization (as identified in the Proffers)
Project Stormwater conveyance to SWM Pond
50%/25%/25% cost sharing

IDA #3c Traffic Signals

IDA #3c.v(1) Sunrise Valley Drive / North-South Road

The scope of the Work is the warrant study(s), design (if warranted), and construction of a traffic signal and infrastructure at the intersection in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County requirements.

Work Includes:

Warrant Studies

Engineering Design, Layout and Surveying

Installation of below grade infrastructure

Construction of traffic signal with UPS back-up power supply (as per Proffers)

50%/50% cost share

IDA #3c.v(2) Sunrise Valley Drive / North-South Road

The scope of the Work is the warrant study(s), design (if warranted), and construction of a traffic signal and infrastructure at the intersection in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County requirements.

Work Includes:

Warrant Studies

Engineering Design, Layout and Surveying

Installation of below grade infrastructure

Construction of traffic signal with UPS back-up power supply (as per Proffers)

50%/50% cost share

IDA #3c.v(4) Carta Way / East-West Road

The scope of the Work is the warrant study(s), design (if warranted), and construction of a traffic signal and infrastructure at the intersection in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County requirements.

Work Includes:

Warrant Studies

Engineering Design, Layout and Surveying

Installation of below grade infrastructure

Construction of traffic signal with UPS back-up power supply (as per Proffers)

50%/50% cost share

IDA #3e Stormwater Improvements

The scope of the Work is as shown on the proposed schematic plans by Dewberry and Associates # C4 and #C9 and in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County final approved and permitted site plans.

Work Includes

Engineering Design, Layout and Surveying
E & S Controls and maintenance
Demolition of existing roadway as conditions require.
Rough and Final grading to the County approved grading plan
Clearing & Grubbing

On-site: Piping Structures, inlets, sand filters, BMPs
62%/38% share

Off-site (starts at East/West @ Carta and goes to the regional pond): Piping Structures, Inlets

If Crimson participates – 50/25/25 share with County capped at \$250,000

If Crimson doesn't participate – 50/50 share with County capped at \$380,000

Design and Construct

IDA #3f County's Garage Site

The work will be in conformance with all relevant VDOT and Fairfax County published codes and specifications. This scope will be modified as necessary to comply with the VDOT and Fairfax County final approved and permitted site plans.

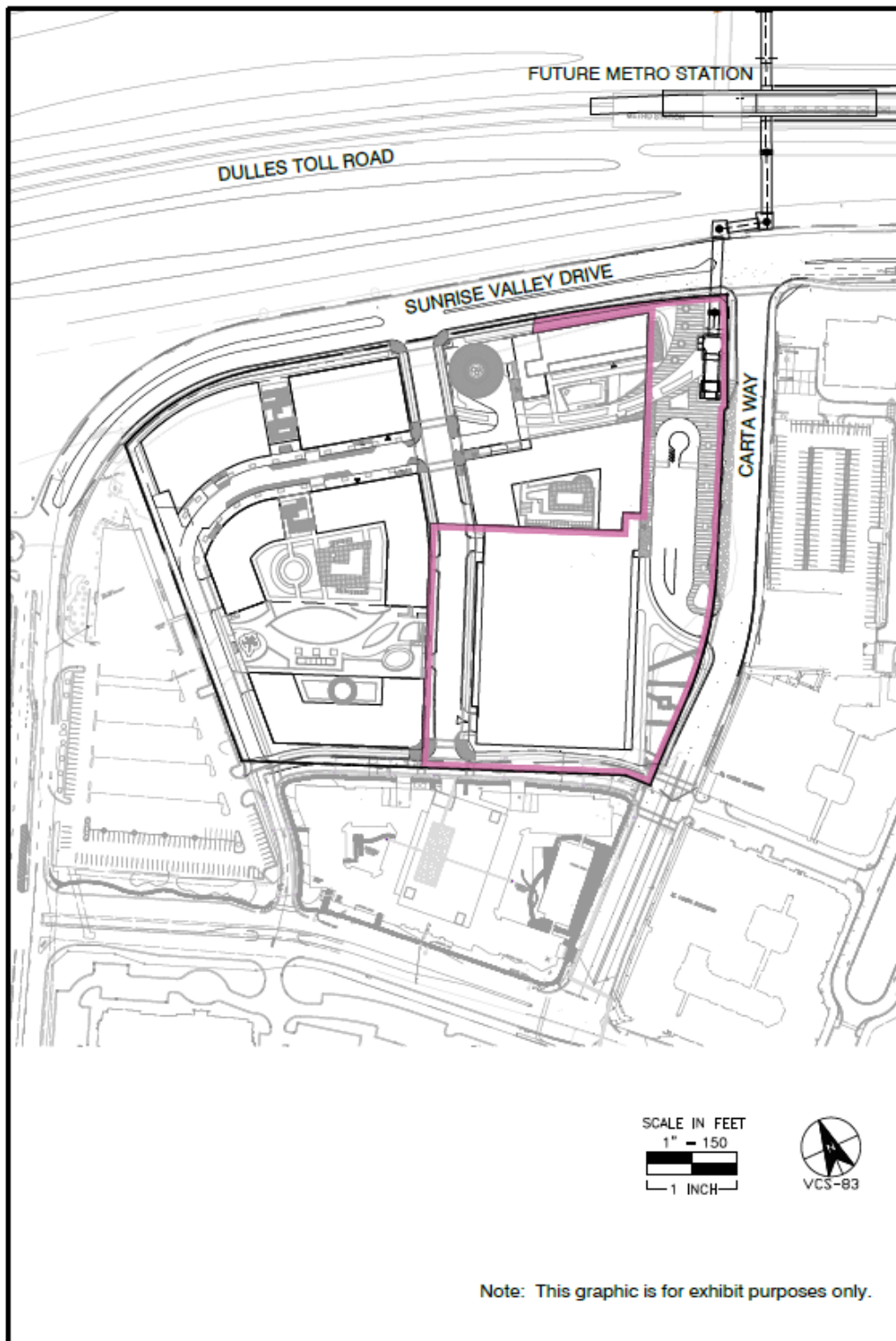
Work Includes:

Engineering Design, Layout and Surveying
E & S Controls and maintenance
Demolition of existing roadway as conditions require
Rough and Final grading to the County approved grading plan
Clearing & Grubbing

All required Pre-construction rock blasting on Property (budget includes blasting for ten (10) feet below rough grade in accordance with the rough grade permit – any blasting required for rock beyond the budgeted ten (10) feet shall be paid as follows: If on County Property, County shall be solely responsible for payment (can be out of County Contingency); if on Nugget Property, Nugget shall be solely responsible for payment)

Temporary soil stabilization

EXHIBIT N
COUNTY'S GARAGE SITE



DATE June 18, 2014	SCALE	TITLE	SHEET NO.
PROJ. NO.	PROJECT		

EXHIBIT O

CONSTRUCTION MANAGER SCOPE OF WORK

1. Appointment.

(a) In accordance with the Infrastructure Development Agreement (“IDA”) between County and Nugget (collectively the “Owners”), Nugget appoints ICS-CM LLC as its sole and exclusive agent in connection with the design development and, if applicable, construction management of the Project. ICS-CM LLC accepts such appointment and agrees to perform design development and construction management services in accordance with the terms and conditions of the IDA and the terms and conditions hereinafter provided, in a diligent, careful and professional manner appropriate to services provided by a first-class construction manager of properties for Owners and in keeping with professional standards for development in Fairfax, Virginia. ICS-CM LLC will apply the full benefit of the judgment, experience and advice of the employees and subconsultants of ICS-CM LLC's organization and will at all times act in good faith, in a commercially reasonable manner and so as to protect the value of the Project and related good will. (b) In discharging its duties and responsibilities hereunder, except as expressly and specifically provided herein to the contrary, ICS-CM LLC shall at all times act in accordance with the Budget and the approved plans and specifications for the Common Infrastructure (“Plans & Specifications”), and ICS-CM LLC shall have no authority to take any action, expend any sum, make any decision or incur any obligation on behalf of Owners which is inconsistent with or varies in any material way from the current Budget or otherwise varies in any significant way from the version of the Plans and Specifications in existence as of the date the IDA is executed.

2. Expense of Owners. All acts performed by ICS-CM LLC pursuant to the IDA and this Scope of Work shall be for the account of, on behalf of and at the expense of Owners, except as otherwise specifically provided in this Exhibit O and subject to the Budget. Owners shall be obligated for payment of all obligations incurred by ICS-CM LLC as set forth in the IDA, reimbursement of which shall be made in accordance with Sections four (4) and six (6) of the IDA, which payments shall be deposited in the Construction Account established by ICS-CM LLC for this Project.

3. Services to be performed by ICS-CM LLC. ICS-CM LLC shall, subject to the terms and conditions of the IDA and Owners obligation to pay pursuant to Section 2 hereof, undertake, on behalf of and for the account of Owners, to:

(a) prepare the Construction Schedule, as more specifically set forth in the IDA;

(b) contract with, monitor/manage the performance of, and maintain contact with the architect, engineer(s) and other design professional(s) for the design of the Project and coordinate the design of the Project;

(c) direct, coordinate and supervise the preparation of all submissions necessary in connection with all required permits (“Permits”) and negotiate with and act as liaison to all governmental authorities in connection with obtaining the Permits (including any site plan and subdivision approval). ICS-CM LLC shall use reasonable efforts in pursuing such Permits but shall not be liable if the necessary Permits cannot be obtained. Owners shall provide ICS-CM LLC, or cause to be provided to ICS-CM LLC, drawings, documents, information, consents and such other items that ICS-CM LLC reasonably determines are necessary to obtain the Permits;

(d) contract with, monitor/manage the performance of, and maintain contact with the Development Contractor, and any other required contractors, for the construction of the Project and perform the construction management services identified in the IDA and herein;

(e) investigate, hire, train, pay, supervise and discharge all personnel reasonably required to be employed by ICS-CM LLC in order to properly supervise the development of the Project by the Development Contractor selected to construct the Project. Such personnel shall in every instance be deemed agents or employees, as the case may be, of ICS-CM LLC and not of Owners and all matters pertaining to the employment, supervision, compensation, promotion and discharge of such employees shall be the sole responsibility of ICS-CM LLC;

(f) maintain insurance as set forth in Section 17 of the IDA (subject to availability on commercially reasonable terms and conditions);

(g) investigate and make a full timely written report to the insurance company as to: (1) any accident at the Project; (2) any claim for damages relating to the operation and maintenance of the Project; and (3) any damage to or destruction of the Project (and the estimated cost of repair thereof); of which ICS-CM LLC has actual knowledge, and prepare and file any and all reports required by any insurance company in connection therewith. ICS-CM LLC is authorized, after consultation with Owners, to settle any and all claims against insurance companies arising out of any policies, including the execution of proofs of loss, the adjustment of losses, signing of receipts and the collection of money; provided, however, Owners approval shall be required prior to the settlement of any insurance claim in excess of \$50,000. ICS-CM LLC is further authorized to contract for the maintenance and repair of said damage;

(h) cause to be disbursed regularly and punctually, prior to the expiration of any applicable grace period: (i) the amounts reimbursable to ICS-CM LLC under Section 2 of this Scope of Work; and (ii) amounts otherwise due and payable as expenses of the Project as set forth in the IDA;

(i) maintain at its regular business office in Northern Virginia separate Project books and journals and orderly files, containing insurance policies, correspondence, receipts, bills and vouchers, and all other documents and papers pertaining directly to the Project or the development thereof;

(j) take such action as ICS-CM LLC reasonably believes may be necessary to comply with any and all applicable laws. ICS-CM LLC, however, shall not take any such action as long as Owners are contesting, or have affirmed its intention to contest and promptly institute proceedings contesting, any such applicable law, except that if failure to comply promptly with any such applicable law would or might in the reasonable, good faith opinion of ICS-CM LLC expose ICS-CM LLC to civil or criminal liability, ICS-CM LLC may cause the same to be complied with;

(k) promptly furnish to Owners, upon receipt by ICS-CM LLC, copies of any and all legal notices received by ICS-CM LLC affecting the Project, including, without limitation, notices from Governmental Authorities and all notices from Lender claiming any default in any mortgage on the Project, and any other notice from Lender not of a routine nature;

(l) coordinate and represent Owners' interest as set forth in the IDA;

(m) coordinate all design and, if applicable, construction work with the Metropolitan Washington Airports Authority ("MWAA") – prior approval by the County is required for any agreements with MWAA (such as rights of entry and easements) that could affect title in, or access to, County Property as depicted in the IDA;

(n) perform those functions, services and obligations of the Construction Manager required by the IDA; and

(o) perform such other functions related to the development of the Project as Owners may reasonably require.

4. The services to be performed by ICS-CM LLC as set forth in this Scope of Work and the IDA do not include actual performance of architectural, engineering or other Project professionals' services for the design or physical construction of the Improvements, all of which shall be contracted out to third parties.

5. ICS-CM LLC fee will be paid as set forth in the IDA.

6. ICS-CM LLC shall devote such time and attention to the work as set forth in the IDA as ICS-CM LLC shall deem necessary, in its sole discretion, to properly and adequately perform its duties hereunder as set forth herein and pursuant to the IDA.

7. ICS-CM LLC Representative. ICS-CM LLC shall designate the person to serve as the representative of ICS-CM LLC in all dealings with Owners hereunder (the "ICS-CM LLC Representative"). Whenever the approval, consent or other action of ICS-CM LLC is called for hereunder, such approval, consent or action shall be binding on ICS-CM LLC if specified in writing and executed by the ICS-CM LLC Representative. Owners hereby consent to the appointment of Michael Hellyer to be the ICS-CM LLC Representative. The ICS-CM LLC Representative may be replaced by ICS-CM LLC by thirty (30) days written notice to Owners in accordance with the terms of the IDA, which written notice shall identify the new ICS-CM LLC's Representative and the reasons for replacement.

8. ICS-CM LLC shall specifically include in all of the contracts it enters into for the design and construction of the Project an express provisions that authorizes the Owners to accept assignment of all of the rights of ICS-CM LLC in those agreements. All contracts entered into by ICS-CM LLC shall name the Owner's as direct third party beneficiaries under any such contracts, and shall require those entities to comply with the insurance obligations set forth in Exhibit J to the IDA (subject to availability on commercially reasonable terms and conditions).